



ANTONIO R. VILLARAIGOSA  
MAYOR

February 9, 2006

Marlene Dortch, Office of the Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Subject: **COMMENTS ON FCC NOTICE OF PROPOSED RULE MAKING (NPRM)  
MB Docket No. 05-311**

As the Mayor of the City of Los Angeles, I am submitting comments on behalf of the residents of the City of Los Angeles (City). I am also submitting comments that support arguments made by the National Association of Telecommunications Officers and Advisors (NATOA) which address the legal concerns or authority surrounding the various issues regarding cable operators, direct broadcast providers, and telephone operators.

The City of Los Angeles is the second largest cable market in the United States and like many of the nation's big-city, urban areas, we manage a unique set of issues that must be addressed.

**BACKGROUND**

The NPRM may be a prelude to changes under consideration on cable franchising rules and regulations that will allow telephone companies (Telcos) seeking to offer cable services the ability to avoid current local cable television legal requirements. Telcos have been lobbying the state and federal legislators over the last two years to void federally-imposed legal requirements that give authority and autonomy to local franchising authorities (LFAs) to negotiate cable franchises for the benefit of local residents. Telcos are attempting to avoid payment of franchise fees, local control over public rights-of-way, Public, Educational and Government (PEG) obligations and other necessary local franchise obligations that have been part of the franchising environment for over 25 years.

The NPRM seeks comment on three major issues: 1) the FCC's legal authority to act and rule upon cable franchising; 2) whether current federal, state and local franchising laws, rules and regulation are an impediment to the entry of competitive cable operators; and 3) what recommendations can be made to the FCC to change such impediments to permit easier access to new competitors in the delivery of cable television services, including the delivery of broadband services by the cable operators.

### **CURRENT STATE OF AFFAIRS AND POTENTIAL NEGATIVE IMPACTS**

As Mayor, I firmly support the development of technology and cable competition which may result in less expensive and more accessible services to our residents. I do not believe that the City's current franchising process unreasonably imposes conditions that discourage entry into this market. Yet, while I support greater competition, I am also cautious to assure that the City's residents benefit from this competition, both in terms of access to services, as well as the ability to use this critical medium for distribution and dissemination of educational, government and public information.

Telcos are attempting to convince the FCC to adopt a different legal basis for granting a cable television franchise to a telephone operator. Current cable franchising law is premised upon the original intention of Congress which recognizes that an LFA is in the appropriate position to determine what is in the best interests of its residents based upon the input of its citizens, and negotiations with the cable operators in the provision of their services and operations. This approach has successfully worked for the City and our cable operators for over twenty-five (25) years and will work for any new entrants seeking access to the City's cable subscribers.

My concern with the NPRM is that the City's jurisdiction and control over the public rights-of-ways, including the right of the City to issue permits, collect necessary permit fees, and oversee construction on the City's streets, alleys and properties, could be severely limited or shifted to the State. The City acts as the primary guardian of the health, safety, welfare of its residents in providing technical management oversight of the cable franchise operators. In addition, payments made for rights-of-way use may be shifted to the State rather than placing the money back into the local community from which these revenues are generated.

Telcos and cable operators may not be subject to the City's newly adopted Subscriber Service Standards and Subscriber Bill of Rights that ensure the maximum protection of cable television consumers and the delivery of advanced services. In addition, Public, Educational and Government channel operations and programming requirements negotiated under current franchise law, may be eliminated as an unreasonable barrier to the entry of the telephone operators in the delivery of cable television services.

This last requirement is a critical component of our existing franchises. Cable television, and in particular public access and quality programming on government and educational channels, have become key mediums by which our public remains informed and through which our children can enrich their lives. Unfortunately, such access does not lend itself well to the market place where programming is directed to the areas of

the greatest discretionary income. While cable television is just one of the many avenues by which we can enrich public life and the education of our children, the absence of the LFA in assuming an adequate distribution of resources will only tend to worsen the divide between the "haves" and the "have nots".

Further, without LFA franchising rights and oversight, the operators will provide services without local accountability and responsibility in the areas of technical, PEG, consumer services, basic tier programming rates, and financial obligations to LFA's. Competition would be stifled as it is more likely that a telephone company will purchase or merge with an incumbent operator to increase its national market position in a local market, thereby potentially undermining any hope of real competition.

### **RECOMMENDATIONS**

I strongly encourage our state legislature, Congress and the FCC, to streamline the current franchising process for new video market entrants to allow easier entry into local markets by:

- 1) Encouraging new entrants to seek franchise agreements with LFAs on the same terms and conditions provided under current federal law.
- 2) Permitting the Telcos and incumbent operators to apply with LFAs for franchise agreements based on established franchise areas which encourage the provision of cable, telephone, wireless, and broadband services to all consumers;
- 3) Permitting the LFAs to continue to require local obligations and responsibilities of all commercial video operators for the benefit of local residents. The LFA is the only entity with the time and inclination to oversee cable television franchises, including content issues.
- 4) Permitting the LFAs and Telcos to negotiate the terms and conditions of the franchise without any additional constraints on both parties as contemplated by the FCC and its NPRM.

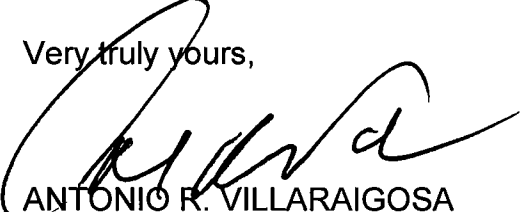
I strongly recommend the FCC abstain from interfering with local government authority over cable television franchising with regard to cable service providers and other new market entrants. The FCC must understand that the City's state of federally permitted authority has never been an impediment to the entry of new competitors or technologies, including broadband services. Market competition has been solely impeded by the significant financial investment that is necessary to enter and compete as witnessed by the financial failure of the three competitive franchise operators whose franchises were negotiated and approved by the City in the timely manner. Their failures to commence operations in the City were completely unrelated to the City's franchise obligations.

My detailed comments are attached for your consideration. I urge the FCC to refrain from adopting the NPRM.

Marlene Dortch, Office of the Secretary  
February 9, 2006  
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Please contact Ken Simmons, Executive Officer, Information Technology Agency, City of Los Angeles, at 213-485-2892 if you need additional information.

Very truly yours,



ANTONIO R. VILLARAIGOSA  
Mayor

Attachment

AVR:ita

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 )  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )

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MB Docket No. 05-311

**COMMENTS OF THE CITY OF LOS ANGELES  
REGARDING CABLE FRANCHISING**

**January 24, 2006**

**MAYOR ANTONIO VILLARAIGOSA  
CITY OF LOS ANGELES**

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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MB Docket No. 05-311

**COMMENTS OF THE CITY OF LOS ANGELES  
REGARDING CABLE FRANCHISING**

These Comments are filed by the City of Los Angeles in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Los Angeles ("City") believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed a cable franchise ordinance. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

**Cable Franchising in Our Community**

**Community Information**

The City of Los Angeles is the second largest city in the United States with an estimated population of 3.9 million, covering over 465 square miles, that includes 6,528.7 cable television plant miles with 1,180,890 homes passed. The City's boundaries extend 44 miles from north to south and 29 miles from east to west. Our franchised cable providers are Adelphia, Comcast, Cox, Time Warner and Charter. Our community has negotiated cable franchises since 1965.

## **Our Current Franchises**

The City has 14 franchise agreements with its five (5) cable operators in 14 separate franchise areas of the City. Adelphia serves five (5) City franchise areas in the East San Fernando Valley, West Los Angeles, Sherman Oaks, Eagle Rock and Boyle Heights – E.L.A. Comcast serves six (6) City franchise areas in Sylmar, Sunland/Tujunga, Hollywood/Wilshire, Westchester, South Los Angeles, and Wilmington. Cox serves one (1) City franchise area in San Pedro. Time Warner serves one (1) City franchise area in West San Fernando Valley. Charter serves one (1) City franchise area in Pacific Palisades.

Our current franchises began in 1987 and expired in 2002. The franchises were extended to August 2005. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. At this time we are currently negotiating a franchise renewal with the incumbent provider, Time Warner, who is expected to take over the Adelphia and Comcast franchises as a result of the recent sale of Adelphia to Time Warner and Comcast's swap of its systems with Time Warner by the end of year 2006.

Our franchises require the cable operator to pay a franchise fee to the City in the amount of five percent (5%) of the cable operators' revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

The franchises require the cable operator to provide channel capacity for three (3) local Public, Educational and Governmental Access (PEG) channels and three (3) City-wide interconnected PEG channels. At the current time, there are twenty-one (21) local Public and Educational Access channels (capacity), one (1) City interconnected Educational Access channel, channel 36, and one (1) City interconnected Governmental channel, channel 35.

Our franchises require that our PEG channels be supported in the following ways by the cable operators:

The franchises grant the cable operators the option of providing and operating the Public and Educational Access channels and facilities or choosing another entity to provide this service throughout the term of the franchise. There are twenty (20) Public and Educational Access channels managed and operated by the cable operators. One (1) non-profit organization manages and operates one intraconnected Public Access channel within the City on behalf of a cable operator in two franchise areas. The City's Government Access channel (channel 35) is funded, managed and operated by the City. However, the City's cable franchise agreements required a combined capital contribution in the amount of \$2,229,590 toward the construction of the Government Access studio for channel 35.

The franchises require the franchisees to provide and maintain State-of-the-Art studio facilities and equipment for Public and Educational Access use within the Franchise Area. Each studio must be available for Public and Educational Access users not less than fifteen (15) hours per week, including evening and weekend hours. If the need arises, the City may request increased availability of studio and facility use times.

Each Public and Educational Access facility is available to Access users on a first-come, first-serve, nondiscriminatory basis and on a priority basis to residents of the Franchise Area or organizations which serve the Franchise Area. Each franchisee or "operator" is required to maintain adequate staff and, or equipment to operate and distribute live or taped Public and Educational Access programming on a twenty-four (24) hour basis.

Regarding equipment, each Operator must provide a studio, portable production units and editing bays, available full time to Access users for the purpose of producing programming for the system's local and interconnected Access channels.

During the hours of Public and Educational Access operations, the operators must have trained staff available to provide technical assistance for pre-production, production and post-production services for all Access users. In addition, the Public and Educational Access staff must: conduct training programs in the skills necessary to produce quality Access programming; establish rules, procedures and guidelines for franchise specific and interconnected PEG Access channels and PEG Access users; and, provide Electronic Bulletin Board services, PEG Access publicity, outreach, referral and other support services to PEG Access users and PEG Access viewers.

At any time the City may review the performance of the operators to determine whether the operators are adequately providing Public and Educational Access facilities, equipment and operational support. Should the City find that the operators are not adequately serving Access users, by non-conformance with the franchise requirements, or by failure to comply with the spirit of the requirements, the City may exercise all remedies available pursuant to the franchise, including the assessment of liquidated damages.

Our franchises do not provide for any requirements regarding an institutional network ("I-Net").

Our franchises contain the following requirements regarding emergency alerts:

**Emergency Override:** The system will incorporate an emergency override capability accessible from remote locations for audio transmissions. The override capability will be granted only to those persons designated by the City.



The incumbent cable operators act in accordance with the protocol established under the Emergency Alert System (EAS) pursuant to the rules and regulations established by the County of Los Angeles, State of California and federal government. The City has relied upon the EAS in times of actual and threatened emergencies, including high wind, storm and flood warnings and earthquakes.

The City has further emergency service communications access to City residents over the cable systems in the utilization of its Government channel. The City's Government channel can provide live broadcasting in the event of an emergency, specific to meet the City's needs in times of disasters and emergencies, over the cable systems.

Our franchises contain the following customer service obligations, by which we are able to help ensure that the cable operators are treating our residents in accordance with federal standards and the terms the operators agreed to under the franchises.

The current franchises establish customer service obligations in the areas of service initiation, telephone and office availability, subscriber communications, rates and charges, and non-discrimination assurances. These service obligations and standards help the City ensure that the cable operators are treating our residents in accordance with federal and state law. In addition, the City has enacted the new Subscriber Service Standards (Attachment A) and the Bill of Rights (Attachment B), which became effective on January 1, 2006, to enhance consumer protections afforded in the current franchise agreements. Some areas covered by the current franchise agreements are set forth as follows:

#### Initiation of Service

Before providing initial service to each Subscriber, the operators shall advise said Subscriber, in writing of:

- (i) The availability of the Signal control device required by Section 624 (d) (2) of the Cable Act;
- (ii) The fees, charges, deposits, and associated terms and conditions which apply to all Services as well as the equipment and facilities then available or being distributed over the System which the Subscriber may elect to receive or use;
- (iii) The procedures by which the Subscriber will be notified of changes in fees, charges, deposits, or associated terms and conditions for any Service;
- (iv) The operators' practices and procedures for protecting against invasions of privacy as required by Section 631 of

the Cable Act, and Section 637.5 of the California Penal Code;

- (v) The operators' procedures for the receipt and resolution of Subscriber complaints; and
- (vi) The address and telephone number of the operator's office in the Franchise Area to which complaints may be reported.

In the event of any material charge in any of the items listed, the operators shall promptly notify each affected Subscriber of said charge in writing.

#### Telephone and Office Availability

The Franchisees must have telephone lines, either adequately staffed or with answering capability, providing at least emergency referral information, which are operational twenty-four (24) hours a day, every day, including weekends and holidays.

The Franchisee's office within a Franchise Area shall be able to respond to consumers a minimum of fifty-four (54) hours a week, eight (8) hours per day, on weekdays and four hours on Saturdays.

For information purposes only, a listing of Franchisees' closings or holidays (e.g. "nonbusiness" days) will be provided to the Department annually, by no later than July 1 and by no later than every anniversary thereafter.

On weekdays, the Franchisees must have telephone lines and its office within a Franchise Area open and adequately staffed to respond to consumers in at least four ways:

- (i) to accept payments;
- (ii) to exchange or accept return of converters;
- (iii) to schedule and conduct service or technician calls; and
- (iv) to answer Subscriber inquiries.

On Saturday, the Franchisees must have telephone lines and adequate staff available: to accept or exchange converters at the option of the Franchisees either at their offices or in the field; to schedule and perform emergency service or emergency technician calls; to answer consumer inquiries which may be answered by advising the caller when and to what number to call back during weekdays; and must have capability to accept payments.

Technicians employed by the Franchisees and capable of performing cable-related emergency repairs and maintenance must be available twenty-four (24) hours a day, every day, including weekends and holidays.

The Franchisees must acknowledge requests for repair and maintenance service from Subscribers within twenty-four (24) hours (excluding weekends and holidays). Verification of the problem, and, if possible, resolution, must occur within forty-eight (48) hours; and in any event, resolution must occur within one (1) week. Those matters requiring additional maintenance, repair or technical adjustments that are documentable as necessitating an excess of one (1) week to reasonably complete, must be finally resolved within thirty (30) days of the initial complaint. The department may require reasonable documentation to be provided by the Franchisees to substantiate a request for additional time to resolve a complaint.

The operators shall provide a pre-designated four-hour block of time for subscriber service appointments. The pre-designated service appointments shall, at a minimum, be scheduled in the morning hours (i.e., 8:00 a.m. to 12:00 p.m.) or in the afternoon hours (i.e., 1:00 p.m. to 5:00 p.m.) with priority for next day or next "available time" service appointments given to subscribers who are not scheduled within the aforementioned schedule.

All requests for Installation, whether requiring aerial or underground wiring, except where new building construction is required, must be completed within thirty (30) days of the request, provided, however, that the Franchisees shall have been able to obtain any necessary easements or other consents necessary to complete the Installation, and that the schedule or preferences of the Person requesting the Installation have not been responsible for delay, and that all applicable fees and charges have been timely paid and collected. In those situations where new building construction, including postwiring of multiple dwelling units, is required, installation shall be completed within 120 days of completion of the new building construction. Consent of the Department must be obtained for installations exceeding the periods specified above, which consent shall not be unreasonably withheld.

#### Subscriber Communications

The Franchisees shall send semi-annually, written notice to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by the Franchisee may be referred to the Department. Such notifications shall be a separate document not containing other promotional material but may be included with a billing statement. The Franchisee's telephone number for service and the telephone number for the Consumer Services Section of the Department shall be contained in the notice. This notice shall be forwarded to the Department, for a check of its accuracy, prior to forwarding it to the Subscribers.

### Rates, Fees and Charges

For informational purposes and for the City to insure nondiscrimination, the operators shall provide the Department a complete schedule of all current Basic Service and Enhanced Service, excluding pay per view, rates and charges and shall give thirty (30) days prior notice to the Department and all affected Subscribers of any pricing changes or additional charges, excluding temporary marketing and sales discounts or offers. The company may petition the Department for the right to exclude certain rates from those to be provided to the Department, but no such petition shall be entertained with respect to any Basic Service rate, term or condition for any individual or any other Basic Service Subscriber.

The City reserves the right to regulate rates for Cable Service to the fullest extent permitted by law. Notwithstanding anything in this Agreement to the contrary, in the event that the Cable Act is amended or repealed, or restriction on the authority of the City to regulate rates are otherwise removed or lessened, or the FCC or any court permits the City to regulate such rates, the City may, at its discretion, establish procedures and standards for rates and regulate such rates to the fullest extent of its regulatory authority under federal, State and local laws.

The Franchisees shall not, except to the extent expressly permitted by law, impose any fee or charge on any Subscriber for: (i) any service call to said Subscriber's premises to perform any repair or maintenance work related to operator installed equipment necessary to receive service, except any such work which was necessitated by a negligent or wrongful act of said Subscriber; or (ii) the disconnection of any Services to a Subscriber, provided that the Franchisees may impose appropriate charges if, at the time of disconnection, some or all of the Franchisee's equipment is not returned to the Franchisee or the Subscriber has not paid all outstanding fees and charges due to the Franchisee; or there is damage to the equipment of the operator, excluding normal wear and tear and the circumstances described in Section 6.18 herein.

### Nondiscrimination Assurances

The operator shall furnish and maintain Services in accordance with the provisions of this Agreement to each Person within the Franchise Area who makes a bona fide request to receive any service. Nothing in this Agreement shall limit the right of the operator to deny service to any household or individual which has negative credit or service history with the operator, which may include non-payment of bills or theft or damage to the operator's equipment, or who has threatened or assaulted employees of the Franchisee in the course of their employment. Provided that in the event Service is denied, the operator will give

written notice to the Subscriber of his right to appeal the operator's decision to deny service to the Department with appeal to the Board and Council.

Our current franchises contain varying reasonable build schedules for the cable operators pursuant to the attachment C for each franchise area of the City in the alphabetical order, A through N, under which the franchises are granted by the City. (See Attachment C – Build Schedule for Franchise Areas A through N.)

Our franchises require that the cable operator currently provide service to each franchise area that it services, without exception. All 465 square miles of the City is served by a franchisee of the City.

In order to ensure that our residents have access to current telecommunications technologies, our Sections 4.6.01 and 4.6.02 of the franchises contain the following rebuild or upgrade requirements:

“Throughout the term of this [franchise], the Franchisee shall Construct, install, operate, and maintain, the System in a manner consistent with all laws, ordinances, and construction standards for the City, and the City’s technical performance standards and testing requirements as provided in Appendix A.... The [City] may from time to time, modify such testing requirements after consultation with the Franchisee. In addition, the Franchisee shall provide the City, upon request with a written report of the results of annual proof-of-performance tests. Throughout the term of the [franchise] the Franchisee shall maintain and upgrade the System Facilities and the technical performance of the System so as to keep pace with the developments in the State-of-the-Art, as defined herein, of Communications Facility technology.

The Franchisee may, on its own initiative, participate in or undertake experiments, tests, and other activities to enhance and advance the State-of-the-Art of Communications Facility technology. The City may request that the Franchisee undertake such tests to the extent the Franchisee and the City reasonably mutually determine that it is economically viable and feasible to do so and provided that such experiments, tests, and other activities are technically sound and undertaken in response to a mutually defined market demand. In addition, the Franchisee shall provide the City with a written report of the results of all significant tests conducted by the Franchisee at the request of the City....”

The City’s incumbent operators have, with the exception of Adelphia, provided advanced services to the City’s residents under the present franchises. Broadband cable modem services have been made available and provided by the operators, without exception, on a universal basis to all City residents since those services first became available to the operators.

Adelphia became a franchisee of the City in 1999 in four (4) franchise areas through a transfer agreement approved by the City. Adelphia, in 2001 acquired the

Boyle Heights – E.L.A. franchise in 2001. Adelphia agreed to upgrade those franchise areas but did not do so in a timely manner. Adelphia again agreed in 2005 to fulfill its initial agreement to upgrade its entire system and is now in the process of completing that work. Advanced services in the provision of High Definition TV programming, Video on Demand and Digital Video Recorder capacity were not available in two of Adelphia's service areas that affect approximately 100,000 City cable subscribers.

Our franchises are silent on the issue of "most-favored-nation" and "level playing field" status.

Our franchises contain varying insurance and bonding/letter of credit requirements depending on the geographic size and population density of the franchise area:

Franchise Insurance Requirements				
Franchise Areas		General Liability (Sec. 12.2.08)	Automobile Liability (Sec. 12.2.09)	Worker's Compensation / Employer's Liability <sup>(d)</sup> (Sec. 12.2.10)
A, C, E, F, G, H, I, K	(a)	\$ 1,000,000	\$ 1,000,000	\$1,000,000 / \$100,000
	(b)	\$ 10,000,000		
	(c)	\$ 5,000,000		
B, D, J, M, N	(a)	\$ 1,000,000	\$ 1,000,000	\$1,000,000 / \$100,000
	(b)	\$ 10,000,000		
	(c)	\$ 2,000,000		
L	(a)	\$ 500,000	\$ 1,000,000	\$1,000,000 / \$100,000
	(b)	\$ 1,000,000		
	(c)	\$ 1,000,000		

<sup>(a)</sup> Per occurrence for Bodily Injury and Property Damage.

<sup>(b)</sup> Aggregate limits during construction.

<sup>(c)</sup> Aggregate limits after completion of construction.

<sup>(d)</sup> Minimum limit per employee.

Performance Bond / Letter of Credit		
Franchise Area	Initial Amount	Current Amount*
A	\$ 892,000	\$ 892,000
B	\$ 170,000	\$ 170,000
C	\$ 1,000,000	\$ 1,000,000
D	\$ 640,000	\$ 115,000
E	\$ 1,000	\$ 1,000
F	\$ 864,000	\$ 864,000
G	\$ 1,565,000	\$ 782,000
H	\$ 1,330,000	\$ 665,000
I	\$ 2,380,000	\$ 1,500,000
J	\$ 540,000	\$ 540,000
K	\$ 1,790,000	\$ 1,450,000
L	\$ 82,000	\$ 82,000
M	\$ 100,000	\$ 100,000
N	\$ 300,000	\$ 300,000

\*Reduced amount upon completion of all upgrade requirements.

The cable franchises grant the cable operators access to the public rights of way (PROW) and compatible easements for the purpose of providing cable television service. Apart from the franchises, the cable providers are required to obtain a permit from the appropriate municipal office before they may access the PROW. In addition,

any new above ground facility (storage box, etc.,) must be approved by the appropriate municipal office. A small application fee is required to process the application.

The franchises provide for the following enforcement mechanisms by which we are able to ensure that the cable operators are abiding by their agreements. The City franchises contain mechanisms of enforcement and remedies available to the City.

The City required performance bond/letter of credit obligations under the franchises permits the General Manager, of the City's cable TV oversight department, to withdraw monies wrongfully withheld or due the City by the Franchisees for failure to pay franchise fees or liquidated damages for PEG Access and construction violations.

Due process, including a notice of noncompliance or breach letter, notice of hearing and hearing and approval of the City Council are required as a condition precedent to the City's withdrawal of any monies allegedly due the City. These proceedings have never been invoked by the City under the terms of the current franchises.

The franchises also enumerate the specific conditions under which the City may terminate a franchise through breach proceedings. If the City can establish, after due process has been afforded the Franchisee under the terms set forth above, that a material condition of the franchise has been violated, then the City can revoke a franchise.

Material breaches of the franchises include:

1. Substantial failure to provide the financial information required by the City;
2. Substantial failure to satisfy the requirements regarding system characteristics or repeated failure to meet the technical performance standards;
3. Substantial or repeated failure to provide any Service to any Person as required by the franchises;
4. Substantial failure to comply with the standards, terms or schedule for construction.
5. Substantial failure to maintain the mix, level, and quality of services within the broad categories of video programming and other services; nothing in this paragraph shall imply any regulatory or power of censorship over the content of programming on the operators' Channels or Leased Channels;
6. Abandonment of the system, in whole or in material part, without the prior written consent of the Council;
7. Substantial and repeated failure to comply with the Leased Access requirements of Section 612 of the Cable Act;
8. Substantial failure to supply the Access Channels and related facilities and equipment after the date by which said items must be supplied;
9. Substantial failure to supply Government Access Channels and other support and any related services, equipment and facilities;

10. Substantial and repeated imposition of any nonstandard installation or other charges for Basic Service which are discriminatory;
11. Substantial and repeated failure to comply with the interconnection requirements;
12. Substantial and repeated failure to comply with the employment or purchasing provisions;
13. Substantial and repeated failure to comply with the consumer service standards and requirements;
14. Substantial failure to comply with the privacy rights of Subscribers or with the provisions of Section 631 of the Cable Act or Section 637.5 of the California Penal Code;
15. Substantial failure to make any of the Franchise Fee compensation payments required by the franchises, or to maintain a bond or other instrument
16. Substantial failure to deposit in an escrow account any compensation or other payments which the Franchisee disputes or contests that have not otherwise been paid to the City;
17. Willful violation of any prohibition set forth in the franchises;
18. The taking of any material action which requires the approval or consent of the Council without having first obtained said approval or consent
19. Substantial failure to furnish and maintain throughout the term of the franchises liability and indemnification insurance coverage;
20. Persistent failure to furnish each plan required by the City pursuant to the franchises;
21. To engage in a course of conduct intentionally designed to practice any fraud or deceit upon the City, any Subscriber, or any other use of the System;
22. Failure to cooperate fully and faithfully with any lawful investigation, audit, or inquiry conducted by a City governmental agency;
23. Any material misrepresentation, intentionally made by or on behalf of the Company in its proposal for the franchise granted pursuant to the franchises, or in connection with the negotiation or renegotiation of, or other modification to the franchises, to the extent that any such misrepresentation was relied upon by the City;
24. The conviction of the operators, any Affiliated Person, any director or executive officer of the operators or of an Affiliated Person, any Person holding Control of or a Controlling Interest in the operators, or any employee or agent of the operators or of any Affiliated Person acting under the express direction or with the actual consent of the operators, its directors or officers, of any criminal offense, including without limitation, bribery, fraud or obscenity, arising out of or in connection with the franchises or the award of the franchises granted pursuant to the franchises, subject to certain express limitations;
25. The conviction of any City officer, City employee, or City agent of the offense of bribery or fraud with respect to the franchises which arise out of or in connection with any intentional action by the operators, subject to certain express limitations;
26. Any material false entry knowingly made in the books or accounts or records of the operators, or any substantial false statements knowingly made in any



report to the City or otherwise by the operators, an director, officer, or other Person holding a Controlling Interest in the operators, any Affiliated Person, or any employee or agent of the operators acting under express direction or with the actual consent of the operators; or

27. Failure to comply with a duly constituted order or substantial ruling of any City regulatory body having jurisdiction over the operators.

Only the City Council and Mayor have the authority to revoke a franchise. Since 1965, the City Council has never instituted breach or revocation proceedings against a cable television operator.

### **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchises provide that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

Section 2.4.05 of the franchises provides, “The [Franchisee] shall comply with : (i) all applicable laws and all requirements of the State of California, the FCC, and other federal or State agency or authority of competent jurisdiction; (ii) all local rules, regulations, and all orders or other directives of the City issued pursuant to the police powers of the City; and (iii) all rules, regulations, and other directives of the City issued pursuant to this Agreement, provided that any such rules, regulations, orders or directives issued pursuant to this Agreement shall be consistent with the provisions hereof.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government.

Pursuant to Article 5, Section 13.17 of the Los Angeles Administrative Code, the Los Angeles City Council shall, if it proposes to grant a cable television franchise, advertise the fact of such application, together with the statement that it proposes to grant the same, once in a newspaper of general circulation printed, published and circulated in the City of Los Angeles.

If the City of Los Angeles considers granting a competitive franchise in a franchise area currently served by a cable service operator, California State law requires public hearing notice in a newspaper of general circulation as well as certain considerations. Specifically, California Government Code Section 53066.3 provides:

“(a) If a city, county, or city and county elects to grant an additional cable television franchise in an area where a franchise has already been granted to a cable television operator, it shall do so only after a public hearing notice pursuant to Section 6066, in a newspaper of general circulation as defined in Section 6000, where all of the following have been considered:

- (1) Whether there will be significant positive or negative impacts on the community being served.
- (2) Whether there will be an unreasonable adverse economic or aesthetic impact upon public or private property within the area.
- (3) Whether there will be an unreasonable disruption or inconvenience to existing users, or any adverse effect on future use, of utility poles, public easements, and the public rights-of-way contrary to the intent of Section 767.5 of the Public Utilities Code.
- (4) Whether the franchise applicant has the technical and financial ability to perform.
- (5) Whether there is any impact on the franchising authority's interest in having universal cable service.
- (6) Whether other societal interests generally considered by franchising authorities will be met.
- (7) Whether the operation of an additional cable television system in the community is economically feasible.
- (8) Such other additional matters, both procedural and substantive, as the franchising authority may determine to be relevant.

(b) Nothing in this section prevents any city, county, or city and county from considering the approval or denial of an additional cable service franchise in any area of the city, county, or city and county, subject to compliance with subdivision (d), or the imposing of additional terms and conditions upon the granting of the franchise, as the city, county, or city and county determines is necessary or appropriate.

(c) The city, county, or city and county shall make a final determination as to whether to grant the additional franchise within six months of the application date unless the jurisdiction can establish that the applicant has unreasonably delayed proceedings designed to consider the matters set forth in paragraphs (1) to (8), inclusive, of subdivision (a).

(d) Any additional franchise granted to provide cable television service in an area in which a franchise has already been granted and where an existing cable operator is providing service or certifies to the franchising authority that it is

ready, willing, and able to provide service, shall require the franchise to wire and serve the same geographical area within a reasonable time and in a sequence which does not discriminate against lower income or minority residents, and shall contain the same public, educational, and governmental access requirements that are set forth in the existing franchise. This subdivision does not apply where all existing cable operators certify to the franchising authority that they do not intend to provide service within a reasonable time to the area to be initially served by the additional franchise.”

### **Competitive Cable Systems**

The City granted a 15-year competitive franchise agreement to Winfirst, a cable overbuilder, in 2001. The City granted a 10-year competitive franchise agreement to Altrio Communications Inc., an open video systems provider, in 2002. However, neither of these companies provides cable service in Los Angeles today. Winfirst declared bankruptcy in March 2002, prior to beginning construction in the City. Winfirst never recovered from bankruptcy and subsequently went out of business. In 2003, several months before Altrio was scheduled to begin providing service in the City, Altrio notified the City that it was going out of business and could not provide cable service to the City’s residents. Although Altrio was subsequently purchased by Champion Communications, Champion is not providing cable services to the City as set forth in the franchise between the City and Altrio Communications.

As part of the franchise agreements with the City, Winfirst and Altrio were required to satisfy universal service requirements as well as Public, Educational and Government Access requirements comparable to those contained in the incumbents’ agreements. Negotiations with Altrio and Winfirst were completed within one year.

### **Conclusions**

The local cable franchising process functions well in the City of Los Angeles. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the PROW are not unduly inconvenienced, and that uses of the PROW, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community’s specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including the City of Los Angeles, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of Los Angeles

By: Honorable Mayor Antonio Villaraigosa

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ATTACHMENT A

CITY OF LOS ANGELES'  
COMMENTS TO FCC NPRM – 05-311  
SUBSCRIBER SERVICE STANDARDS

**CITY OF LOS ANGELES**  
**SUBSCRIBER SERVICE STANDARDS**

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## **DEFINITIONS**

**Board** means the Board of Information Technology Commissioners of the City of Los Angeles, its designee, or any successor thereto.

**Business Hours** means at least the 54 hours during the week in each Franchise Area most convenient to Subscribers.

**Cable Act** means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984), as may be from time to time amended.

**Cable Service** means the transmission to subscribers of Video Programming or other programming service, and subscriber interaction, if any, that is required for the selection or use of such Video Programming or other programming services.

**City** means the City of Los Angeles, or as appropriate in specific provisions of these Standards, the Council, Board, Department, or any other entity of or acting on behalf of the City, or any officer, official, employee, or agent thereof, its designee, or any successor.

**Company** means any individual or association, partnership, joint venture, corporation, or other legally-recognized entity, whether for-profit or not-for-profit which provides in the City, for some fee, whether direct or indirect, more than one channel of Video Programming to a business or residence, including but not limited to a home, condominium, or apartment whether or not the public rights-of-way are used. A "Company" shall include, but not be limited to, providers of cable television, master antenna television, satellite master antenna television, multipoint distribution service, open video system, and other providers of Video Programming, what ever their delivery technology. A "Company" shall not include the City or a landlord providing only reception of broadcast Video Programming to a single family-home or other residential dwelling consisting of four units or less.

**Consumer Services Division** means the unit of the City that assures that Subscribers' rights and responsibilities are represented before, during, and after provision of services, or any successor.

**Customer Service Representative** means an agent, employee, or contractor of the Company authorized to act on behalf of the Company.

**Department** means the Department or Office/Agency of the City of Los Angeles which administers to Consumer Services Division.

**FCC** means the Federal Communications Commission.

**Franchise** is the authorization by the City to construct, operate and repair a multi-channel video system in the public rights-of-way for the purpose of providing cable, open video channel or other multi-channel service.

**Franchise Area** is a geographic area within the City in which a Company is entitled to construct, operate and maintain a System, as described in its Franchise Ordinance.

**General Manager** means the Department General Manager, the General Manager's designee or successor.

**Normal Operating Conditions** are Service conditions within the Company's control. Conditions, that are ordinarily within the Company's control include but are not limited to, special promotions, pay-per-view events, rate increases or other rate changes, regular peak or seasonal demand periods, changes in channel alignment and maintenance or upgrade of the System. Conditions not within the Company's control include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.

**Or** means "and/or".

**Outage** is a loss of reception of audio or video on one or more channels.

**Service Call** means any work requiring the Company's representative to visit the Subscriber's residence or any appointment requiring the Subscriber's presence, including without limitation installation, repair and additional outlets.

**Standards** mean these Subscriber Service Standards.

**Subscriber** means the City or any business, entity or person who is lawfully receiving, for any purpose or reason, any multi-channel Video Programming, whether or not a fee is paid for such service.

**System** means any equipment or facilities used to deliver service to a Subscriber or Subscribers.

**Video Programming** means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.



## 1. TELEPHONES AND OFFICE AVAILABILITY

- 1.1 The Company will maintain a local, toll-free or collect call telephone access line which shall be available to its Subscribers 24 hours a day, seven days a week.
- 1.2 During Business Hours, these telephone lines shall be adequately staffed with knowledgeable, properly trained Customer Service Representatives who are equipped with timely and accurate information available to provide concise and accurate answers to Subscriber telephone inquiries. These Company representatives shall include representatives who are fluent in Spanish. In addition, the Company shall offer foreign language capability for callers.
- 1.3 The Company shall participate in the California RELAY system and shall provide Telecommunication Device for the Deaf ("TDD/TTY") (or equivalent) service by trained Customer Service Representatives at no cost that will allow such Subscribers to contact the Company for any reason related to the System. Upon request where closed captioning is available it shall be provided by the Company at no cost to the Subscriber beyond any cost imposed by the network offering closed captioning.
- 1.4 A trained supervisor or manager must be available to a Subscriber upon request. If one is not available a supervisor must call back no later than the next business day.
- 1.5 Under Normal Operating Conditions telephone answer time by a Customer Service Representative, including wait time shall not exceed thirty (30) seconds when the connection is made. If the call must be transferred, transfer time to a Customer Service Representative shall not exceed thirty (30) seconds 90% of the time.
- 1.6 Subscribers shall receive a busy signal less than three percent (3%) of the time.
- 1.7 The Standards set forth in this section shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured quarterly. Time responses will be measured and audited by the Company quarterly and shall be provided to the department 30 days after the end of each quarter. If the Company fails to comply in a quarter with these Standards, compliance shall be measured monthly until the Company returns to compliance. Where the lack of compliance is due to extenuating circumstances, the Company can request relief from the monthly reporting requirement from the General Manager, who shall be empowered to waive the monthly reporting requirement on a showing of good cause by the Company.
- 1.8 The Company shall notify the Department promptly when telephone service interruption affects the Company's ability to fully comply with these Standards.

- 1.9 If the Company uses an automated answering or message system, the system shall provide a clearly-indicated opportunity to speak with a Customer Service Representative no later than the second tier of Voice Recognition Unit (VRU) selection. The automated system may not disconnect a caller without allowing the caller an opportunity to make another menu selection or to speak with a Customer Service Representative.
- 1.10 If the Company does not have 24 hour customer service, it shall use a phone system or answering service that shall adequately administer service Outage calls to:
  - a. Permit a Subscriber to report Outages and to leave name and account number for an Outage credit;
  - b. Contact the person authorized by the company to initiate corrective measures; and
  - c. For Outages known to the company, provide up-to-date information on the Outage status, efforts taken to correct the problem, and the estimated time when service will be restored.

After Business Hours, the access line may be answered by a service or automated response system that shall record calls about billing questions, complaints, or all other matters. A trained Customer Service Representative shall return recorded calls by the close of the business of the next business day.

- 1.11 If a Company chooses to use a VRU, it shall offer the option in the first tier of VRU selection for the Subscriber to select a Spanish language route through the VRU. If the Company has a large number of Subscribers in a Franchise Area whose first language is another foreign language, the Company is encouraged to also offer that language route through the VRU. The Company shall offer the ability to override the VRU no later than the second VRU menu to speak with a live operator.
- 1.12 The Company must provide to the department statistically valid annual surveys to measure compliance with the Standards in this section. The Company must submit all survey results to the Department 30 days after the end of each calendar year.
- 1.13 Except as otherwise indicated in the Franchise Ordinance, Companies Franchised by the City shall have at least one customer service center located within each City Franchise Area to respond to Subscribers a minimum of fifty-four hours per week (including Saturday hours). The hours open shall be the hours most convenient to Subscribers in each Franchise Area. The office must be accessible for persons with disabilities, easily accessible through public transportation, have regular and handicap parking conveniently available for its Subscribers, and adequately staffed by trained Customer Service Representatives equipped with timely and adequate information to respond to Subscribers in at least four ways:

- a. To accept payments;
  - b. To exchange or accept return of converters;
  - c. To schedule and conduct Service Calls; and
  - d. To answer Subscriber inquiries.
- 1.14 "Adequately staffed" means that 90% of the time at each customer service center measured quarterly on an office-by-office basis. No Subscriber shall wait more than fifteen minutes before seeing a Customer Service Representative. The Company shall monitor compliance with this Standard quarterly. (The Company need not monitor compliance continually so long as the methods used to monitor compliance are statistically representative.) The City may from time to time monitor compliance with this provision without advance notice to the Company.
- 1.15 A trained supervisor or manager shall be available in all customer service centers to meet in person with Subscribers or other persons requesting a meeting during Business Hours or shall be available by telephone.
- 1.16 A Company shall post hours of operation at its customer service centers.
- 1.17 A Company shall place a payment drop box or payment slot directly outside of its customer service centers or provide other means for payment after Business Hours. A payment shall be credited no later than close of business of the next business day.
- 1.18 Training. Before a Company employee or contractor interacts with Subscribers either in person or by telephone or by electronic means, that person shall be adequately trained. Adequate training includes training sufficient to ensure that the employee is fully conversant with all aspects of the job he/she will perform, including resolution of Subscriber problems, the costs, products and services offered by the Company, how to operate the equipment and the system, how to make a complaint, a Subscriber's rights, the Company's billing, payment and refund procedures. Before changes are introduced to a Company's products, pricing, services, special offers, equipment, procedures, and channel line-up, the employee or contractor must be fully trained in the changes. Each employee shall have for his or her immediate use adequate information to answer Subscriber questions.
- 1.19 Telephone calls with Subscribers that quote rates, fees, and other charges shall accurately quote the rates, fees, or charges inclusive of all applicable Franchise fees and other fees.
- 1.20 Orders of the General Manager. If the Company fails in one quarter to conform to the Standards set forth in this Section, the General Manager may issue an order imposing conditions on the company. Such order may, among other things, impose minimum staffing levels of Customer Service Representatives and minimum hours of operation to handle Subscriber calls. The order shall

include the terms and conditions under which the minimum staffing level and hours of operation shall be withdrawn. Before issuing such an order, the General Manager shall meet and confer with the Company in an effort to achieve compliance. The General Manager will evaluate all relevant considerations to determine whether the failure to comply is due to extenuating circumstances. If an order is issued, the Company may appeal it to the Board. An order by the General Manager may be imposed in addition to all other remedies available in these Standards.

- 1.21 In order to properly insure that Customer Service Representatives are fully familiar with the issues and problems that arise from operating one or more systems in Los Angeles, each Company shall maintain a call center located in the City (except as otherwise indicated in the Franchise Ordinance). Multiple Franchise areas may be serviced by the same Los Angeles call center and that call center may also service systems located outside of Los Angeles. The Los Angeles call center may be located in the same office as a customer service office. The Los Angeles call center shall be adequately staffed to comply with Sections 1.2, 1.6, and 1.7 of these Standards, as may be amended from time to time.

## **2. ACCOMMODATIONS FOR PERSONS WITH DISABILITIES**

- 2.1 The Company shall provide maximum possible accommodation of the services and facilities of the System to persons with disabilities. At a minimum, at no cost to the Subscriber, the Company shall provide a single remote control device for each television set connected to the service to those Subscribers with disabilities.
- 2.2 Upon initiation of service in the City, the Company shall submit to the Department a plan and/or report describing the equipment, facilities, and ongoing services the Company intends to or does make available to persons with disabilities. This response shall be updated and submitted to the Department annually, if there are any changes from the prior year's report. Such information regarding the facilities, equipment, and ongoing services for persons with disabilities shall be updated and the Company shall promptly notify the Department of any substantive deletions or additions to such information.
- 2.3 The Company shall provide for rental or purchase, within forty-five (45) days of a Subscriber request, equipment that facilitates the reception of all services by hearing-impaired Subscribers.
- 2.4 The Company shall comply with all federal, state and local laws, rules and regulations with respect to providing accommodations to persons with disabilities.

### **3. EMPLOYEE OR CONTRACTOR IDENTIFICATION**

- 3.1 Each Company employee or contractor who comes into contact with Subscribers at Subscriber premises shall wear and prominently display a picture identification card that clearly indicates his or her name and employment or subcontractor status with the Company or contractor and shall, upon request, show the identification card. No such employee or contractor shall be utilized unless that person has passed a detailed criminal background check.
- 3.2 A Company shall clearly identify all of its vehicles as being associated with the Company. A Company shall require its contractors to clearly label all of its vehicles with the name of the Company.
- 3.3 The Customer Service Representative(s) shall provide the Subscriber with his/her own true name or Company approved name, or his/her Company issued Customer Service Representative number and a direct toll free phone number to call either the Representative or that person's supervisor.

### **4. INSTALLATIONS**

- 4.1 Except as otherwise provided in the Franchise Ordinance, standard installations are those that are located up to 150 feet from the existing distribution system.
- 4.2 All installations will include appropriate grounding, television set adjustments to receive service, and give the Subscriber instructions and literature sufficient to instruct the Subscriber how to use the services and products offered, prices and options for programming services and subscription conditions, channel positions, billing and complaint procedures. Where appropriate the literature shall be written in Spanish or other foreign language spoken by a large number of Subscribers in a Franchise Area.
- 4.3 All installations (subject to the Company's Service Obligations) shall be completed in compliance with deadlines set forth under applicable law.
- 4.4 A Company shall endeavor to complete standard installations during a single appointment to the Subscriber's address. If it is not possible to complete a standard installation in one appointment, the Company shall return the next business day to complete the installation except where that is not convenient to the Subscriber. If a subsequent appointment is needed to complete a non standard installation, a Company shall inform the Subscriber and shall schedule the appointment for the earliest mutually available time period, not to exceed three (3) business days except where three (3) business days is not convenient to the Subscriber.
- 4.5 If the Company cannot perform standard installation within seven (7) business days of a Subscriber's request (provided that the schedule or preferences of the person requesting installation is not responsible for the delay), the

Subscriber is entitled to receive an automatic \$25.00 credit. If the Company fails to provide the credit within 20 days of the installation request, the credit provided shall increase by \$2.00 a day until it is provided. The City may direct the Company to issue the credit.

- 4.6 In connection with a transaction between a Company and a Subscriber that involves a visit to a Subscriber's address, a Company shall upon request, provide the Subscriber a written receipt describing the transaction and the date and time.

## **5. SERVICE STANDARDS**

- 5.1 Under Normal Operating Conditions, requests for installation, service, repair, and maintenance must be acknowledged by a trained Customer Service Representative within twenty-four (24) hours, or before the end of Business Hours, whichever is earlier. Where the communication with the Subscriber has been electronic concerning the request, the acknowledgement may also be electronic.
- 5.2 The Company will respond to all other inquiries (including billing inquiries) within five (5) business days of the inquiry.
- 5.3 Under Normal Operating Conditions, repairs and maintenance for outages or service interruptions must commence and the Company shall endeavor to complete the work within twenty-four (24) hours after the outage or interruption becomes known to the Company. Where completion of the work is not possible within that time, work shall continue each consecutive calendar days until the work is completed.
- 5.4 Under Normal Operating Conditions, work to correct all other service problems must begin by the next business day after notification of the service problem, and must be completed within five (5) business days from the date of the initial request. Where a service problem is of such complexity that it cannot be completed within five (5) business days, the General Manager, upon good cause shown in a written application by the Company, shall grant relief from Section 5.4. The Company may appeal to the Board any denial by the General Manager.
- 5.5 When Normal Operating Conditions do not exist, the Company will complete repair or maintenance work in the shortest time possible.
- 5.6 The Company will not cancel a service or installation appointment with a Subscriber after the close of business on the business day preceding the scheduled appointment unless the Subscriber initiates such cancellation.
- 5.7 Except as a Franchise Ordinance otherwise provides, service must be extended upon request to any person in a Company's Franchise Area within

seven (7) calendar days of the request, except where compliance with this deadline is inconvenient to the Subscriber.

- 5.8 Additional outlets, service upgrades, or other connections separate from the initial installation will be completed within seven (7) calendar days of an order being placed except where compliance with this deadline is inconvenient to the Subscriber.
- 5.9 Under Normal Operating Conditions, the service Standards set out in Sections 5 and 6 must be met within the time limits specified at least ninety percent (90%) of the time, measured quarterly, to be reported in writing to the Department no later than thirty days after the end of the quarter.

## **6. SERVICE INTERRUPTIONS AND OTHER SERVICE PROBLEMS**

- 6.1 The Company shall promptly notify the Consumer Services Division of any significant System Outage or of any service interruptions lasting at least four (4) continuous hours affecting at least ten percent (10%) of the Subscribers in any Franchise Area.
- 6.2 The Company shall exercise its best efforts to minimize service interruptions during maintenance, repair, and construction of the System. The Company will provide forty-eight (48) hours prior notice to Subscribers and seventy-two (72) hours prior written notice to the City before interrupting service for planned maintenance. However, planned maintenance that does not require more than two (2) hours interruption of service and occurs between the hours of 1:00 a.m. and 5:00 a.m. will not require notice to Subscribers. Emergency repairs including picture, sound, quality loss or degradation may commence without prior notice, provided, however, that the Company shall no later than the time of commencing the repair shall provide written notice to the City and, if technically possible, on air notice to Subscribers.
- 6.3 Technicians who are capable of performing service-related emergency repairs and maintenance must be locally available twenty-four (24) hours a day, every day, including weekends and holidays.
- 6.4 The Company shall provide an automatic credit to all affected Subscribers when there is an Outage for four (4) consecutive hours or more affecting at least 100 Subscribers in a Franchise Area, regardless of the Outage cause. Where the Outage or a material loss in picture or sound quality occurs during a pay-per-view special event and affects at least 100 Subscribers in the City served by the Company, the credit which shall be automatic, shall also include a full credit equal to the value of the special event service if the length of the service disruption is at least 20% of the length of the program.

At the request of the Subscriber, the Company shall provide a credit to the Subscriber when there is an Outage of four (4) hours or more affecting less

than 100 Subscribers in the City served by the Company, regardless of the Outage cause.

The credit for any Outages shall equal, at a minimum, the value of one-thirtieth (1/30) of each Subscriber's total monthly bill (including all charges for any service affected by the Outage including premium channels), for the first twenty-four (24) consecutive hours and prorated for each additional 4-hour period or portion thereof that the Outage continues.

- 6.5 The Company shall provide a quarterly summary of Service Calls received by category to the Department Consumer Services Division. If the Company holds more than one Franchise within Los Angeles, Franchise Area shall compile the report. The Department may specify a reasonable report format to be used.
- 6.6 Companies are encouraged to interrupt service during late night hours.
- 6.7 A Company may notify Subscribers of a scheduled service Outage through various means calculated to effectively reach the Subscriber including electronic messages and advertisement spots on the System (for example, scrolling messages).
- 6.8 A Company shall maintain a written log of all service interruptions, which shall be available for inspection and copying by the Department.

## **7. SERVICE APPOINTMENTS**

- 7.1 Upon a request for a service requiring access to the Subscriber's premises, a Company shall either offer a specific time or "appointment window" time block of not more than four (4) hours for the selection. The appointment window may be longer only if the Subscriber consents. A Company may schedule appointments outside of normal Business Hours for the express convenience of the Subscriber.
- 7.2 If the Company does not arrive for appointments for installations or Service Calls within a designated 4-hour time frame agreed to by the Subscriber, the Subscriber shall receive an automatic \$25.00 credit and the service installation shall be free of charge. If the Company fails to provide such credit within 20 days of the missed appointment, the credit provided shall increase by \$2.00 a day until it is provided. The City may direct the Company to issue the credit. This remedy shall not preclude a Subscriber from pursuing any applicable remedies afforded by law.
- 7.3 If the Company representative cannot keep the scheduled appointment, the Company will document a diligent effort to contact the Subscriber directly. If the Subscriber is unavailable when the contact attempt is made, the Company will attempt a second documented contact during the previously agreed upon appointment window. The appointment will be rescheduled with a window no longer than two hours except where the two-hour window is not convenient to



the Subscriber. Contacting the Subscriber will not excuse a missed appointment nor exempt the Company from providing the automatic credit.

- 7.4 Within a reasonable time prior to an appointment period, the Company shall call the Subscriber to confirm the appointment. If the Subscriber does not answer the telephone call and the Subscriber has an answering system, the Company shall leave a message.
- 7.5 If the Subscriber is unavailable during the scheduled appointment time or window, the Company shall leave written notice, such as a door tag, with the telephone number(s) to contact the dispatcher to reschedule the appointment. Where the communication with the Subscriber about the appointment has been electronic, the Company may instead of a written notice provide an electronic notice.

## **8. NOTICES AND SUBSCRIBER COMMUNICATIONS**

- 8.1 A Company shall make available in written format upon request, at its customer service centers, and posted on the Company's website, the following information.
  - a. Subscriber Service Standards;
  - b. Subscriber Bill of Rights. The Bill of Rights shall be a separate document and shall also be available in Spanish;
  - c. A list and description of the services provided by the Company;
  - d. A channel location list for each rate tier;
  - e. A list of all rates, terms, and conditions for each service and service tier, each type of equipment, and all other charges, including without limitation, charges for installation, connection of additional outlets, equipment deposits, reconnection service, VCR, DVD and DVR connections, relocating cable outlets, and returned checks;
  - f. The location(s), hours of operation, and telephone number(s) for each customer service center and call center;
  - g. The location(s) of each payment center, where different than the customer service centers;
  - h. The Company's customer service department telephone number(s), with a brief description of the services and information available by dialing each number;
  - i. The Company's customer service website with a brief description of the services, information available and how to contact the customer service department electronically by accessing the website;
  - j. Details about how to pay bills, request installation or upgrades;
  - k. Notice of Subscriber terminal equipment available, the procedure to obtain the equipment, including, but not limited to, wireless remote control devices, parental control devices, digital converters, and closed caption decoders and costs, if any, for such equipment;
  - l. An explanation of other communications devices that may be used with the system, including, but not limited to, video cassette recorders,

- remote control devices, cable modems, v-chip technology, closed captioning decoders, and parental control devices;
- m. Notice of the commercial availability of universal remotes and other compatible equipment, clearly indicating that a list of specific brands and models, consistent with all applicable rules and regulations, shall be provided to a Subscriber upon request;
- n. Rental equipment terms, including procedures for equipment return and the Subscriber's liability for lost, stolen, or damaged equipment;
- o. A description of a Company's billing and collection procedures, including any applicable policy for late fees, returned check charges, and credit balances;
- p. The steps for re-subscribing to service after an involuntary service termination;
- q. The policy governing service outages and repair service, including the time periods by which repairs for reception problems and other service problems shall be made;
- r. Billing dispute resolution procedures;
- s. Any Company policy concerning customer service violation credits, including outages and reception problems;
- t. Return deposit procedure;
- u. The procedure and charges, if any, for service changes, including, but not limited to upgrade, downgrade, or termination of services;
- v. All installation and maintenance policies;
- w. A notice that Subscribers may pay bills in person at a Company's customer service center(s) in the City or other payment location(s);
- x. A listing of special services for Subscribers with disabilities;
- y. A description of a Company's Subscriber complaint resolution procedure, including contact information (address, phone number, and website address) of the Department for unresolved complaints;
- z. The Subscriber privacy policy;
- aa. An announcement that all Company employees and contractors who come into contact with Subscribers at the Subscriber's premises wear an identification card that includes the employee's name and photograph;
- bb. The phone number and mailing address of the Consumer Services Division; and
- cc. Additional information to Subscribers required by applicable law or Franchise Ordinance.

- 8.2 Every thirty (30) days, the Company shall provide the Consumer Services Division a schedule of all current programming Services, including rates and charges. The Company may petition the Department for the right to exclude certain rates from those to be provided to the Department, except for any Basic Service rate, term, or condition. The Company can appeal a denial to the Board. If the information provided on the last monthly schedule sent to the Consumer Services Division remains current, a new schedule does not need to be sent until there is a change.

- 8.3 The Company shall notify Subscribers of any pricing changes, additional charges (excluding temporary or permanent marketing and sales discounts or offers), programming service changes (including the scrambling or descrambling of channels except the descrambling of a channel(s) for promotional purposes). Notice must be given to Subscribers as soon as possible through announcements on the System and in writing at least thirty (30) days before such changes if the change is within the Company's control. The Company shall also notify Subscribers thirty (30) days before any significant changes to the other information required by this Section. Where the Company normally communicates with a Subscriber electronically, in lieu of written communication the Company may provide these notifications to the Subscriber electronically.
- 8.4 A Company shall provide written notice to the Consumer Services Division for review and comment at least fifteen (15) days before being transmitted to Subscribers and to all Subscribers at least thirty (30) days prior to the effective date of a change in any of the following:
- a. Programming service or channels including the discontinuation of an existing service, new service addition, channel location, or in the number of hours a service is carried over the Company's system;
  - b. Rates, charges, terms, or conditions for the receipt of service or equipment;
  - c. A customer service center location, phone number and hours of operation;
  - d. Billing practices; or
  - e. The policies or other information set forth pursuant to these Standards.

A Company shall also provide written notice of changes to Subscribers in billing messages, inserts, or other communications prior to the service change date. Where the Company normally communicates with a Subscriber electronically, in lieu of written communication the Company may provide these verifications to the Subscriber electronically.

- 8.5 Where a pricing or billing practice change is a temporary or permanent discount or rate reduction, introduction of a new program, service or channel that does not require the elimination of an existing programming service or channel, the Company instead of submitting the change for advance review to the Consumer Services Division and providing advance notification to Consumers as required in Section 8.5 or 8.6 may opt for a post change review. A Company choosing this alternative must agree to the following:
- a. No later than simultaneously with the implementation of the discount or rate reduction the Company shall notify the Consumer Services Division in writing and electronically of the proposed change and provide full details concerning the change.
  - b. If the Consumer Services Division finds that the change was not a reduction or discount or was deceptively, inadequately or unfairly described, it may order any or all of the following:

- i. An immediate halt to the change;
    - ii. Subscriber notice to each Subscriber correcting the deceptive, inadequate or unfair description in the manner prescribed by the Consumer Services Division;
    - iii. Reimbursement to each subscriber of any fees or charges assessed due to the challenged practice.
    - iv. Penalties as set forth in these Standards; and
    - v. Such other relief deemed appropriate by the Consumer Services Division.
  - c. The Consumer Services Division determination can be appealed utilizing the appeal procedures set forth in these Standards. However, the Consumer Services Division can still require Section 8.7 B i. and ii. to be immediately effective pending appeal.
  - d. To minimize subsequent enforcement activity, Companies using this alternative are encouraged but not required to consult with the Consumer Services Division staff before implementing the change.
- 8.6 Within ninety (90) days after the effective date of these Standards, the Company shall file with the Department its written procedures for receiving, acting upon, and resolving Customer complaints. The Company shall file an update of the procedure annually on or before January 31 of each year, if there have been any changes to the procedures. The Department or the Board may request the Company review its procedures at any time if the Company's resolution time is twenty percent (20%) or more out of compliance. The procedures shall prescribe the manner in which a Customer may submit a complaint and the time in which the Company commits to investigate and resolve such complaints.
- 8.7 Notices of changes in rates, programming services, channel position, policies, instructions, equipment availability or other Subscriber information that are not within the Company's control shall be submitted to the Department for review and comment as soon as practicable, allowing the Department as much lead-time as possible prior to finalization. Department approval must be obtained before sending the notices to the Subscribers except where the Company opts for the procedures in Section 8.6 of these Standards.
- 8.8 The Company shall submit to the Consumer Services Division all billing inserts and other mailings to Subscribers prior to or at the same time as they are sent to the Subscribers.
- 8.9 Rate change notices shall include all fees and describe the increase or decrease from the current rate. Specific words such as "increase" or

"decrease" must be used to describe the changes, rather than vague terms, like "adjustments".

- 8.10 No less than seven (7) days prior to engaging in upgrades and new construction, the Company must provide written notice to the Consumer Services Division that construction will occur and how the Company will notify affected residents, information regarding the anticipated duration, a brief and accurate Statement of the Company's property and rights of way restoration obligations, and the Company's contractor's name, if any.
- 8.11 Every service termination notice shall include:
- a. The name and address of the Subscriber whose account is delinquent.
  - b. The delinquency amount.
  - c. The date by which payment is required to avoid service termination.
  - d. The telephone number of a Company representative who can provide additional information and handle complaints or initiate an investigation concerning the service and charges in question.
  - e. The phone number and location of the customer service centers or other locations where the bill may be paid. Where a Company allows electronic payment of bills, the notice should contain information about how to pay the bill electronically.
- 8.12 The Company is encouraged to permit Subscribers to pay bills, order new service, request upgrades or new connections and contact the customer service department through electronic means. The Company shall inform Subscribers how to contact the Company electronically by the same means it tells subscribers how to contact the Company by telephone or in person.
- 8.13 If the Company has a large number of Subscribers whose first language is other than English, the Company is encouraged to provide the notices required by this Section in those other languages.
- 8.14 The Company shall distribute information related to the provision of multi-channel Video Programming at the City's request through a bill mailer insert or a bill message. Where a Company sends bills to a Subscriber electronically, this requirement may also be satisfied through an electronic bill message.

## **9. BILLS**

- 9.1 Bills shall be clear, concise, accurate and understandable. Bills must be fully itemized, including, but not limited to, charges for each programming service to which the Subscriber subscribes and equipment charges. When a Company chooses to itemize Franchise fees and other government-imposed fees or taxes, such fees or taxes must be accurately calculated and quoted regardless of whether the rates are regulated.

- 9.2 The first billing statement issued by the Company after a new installation or service change shall be prorated and shall reflect any security deposit.
- 9.3 Every residential Subscriber shall have at least twenty-seven (27) days from the bill mail date to pay the listed charges unless otherwise agreed to pursuant to an apartment or office lease.
- 9.4 The Company shall not charge more than four dollars and seventy-five cents (\$4.75) for late payment which may not be imposed any earlier than twenty-seven (27) days from the due date specified in the invoice.
- 9.5 A Company shall forward to the Department, monthly, a sample bill for the appropriate billing period. Said bill shall be marked "City Sample Bill".
- 9.6 The exemplar bill shall show, at a minimum, the charges for each programming service tier offered by the Company, at least one premium service, and, for Companies that itemize Franchise fees or other fees on their bills, the amount of Franchise fees or other fees. The bill shall include charges for prior months only if the charges are credited on the bill prior to the listing of new charges.

**10. ACCESS TO SERVICE/SERVICE TERMINATION OR DENIAL/BILLING DISPUTES**

- 10.1 The Company shall not terminate residential service for nonpayment of a delinquent account unless the Company provides a written notice of the delinquency and impending termination at least fifteen (15) days before the proposed termination. The notice shall be mailed to the Subscriber to whom the service is billed. This notice shall not be mailed until the twenty-eight (28<sup>th</sup>) day after the bill was mailed to the Subscriber. The delinquency notice and impending termination may be part of a subsequent billing statement if the notice is clear and conspicuous.
- 10.2 A Subscriber who in good faith disputes all or part of a bill has the option of withholding the disputed amount without threat of service termination until five (5) days after the dispute is resolved provided that:
  - (a) The Subscriber pays all undisputed charges;
  - (b) The Subscriber provides timely notification of the dispute to the Company; and
  - (c) The Subscriber cooperates in determining the appropriateness of the charge(s) in dispute.

If the Company and the Subscriber are unable to resolve the dispute, either party may submit the dispute to the Department for resolution by submitting a written request that sets forth the dispute in detail. The decision of the Department may be appealed to the Board pursuant to Section 15.15.

- 10.3 The Company shall only terminate service on days when the Subscriber can reach a Company representative either in person or by telephone with authority to resolve disputes and to prevent service terminations. Service terminated without good cause must be restored promptly without charge. Good cause includes, but is not limited to, failure to pay, payment by check for which there are insufficient funds, theft of service or abuse of equipment or system personnel.
- 10.4 Nothing in these Standards shall limit the Company's right to deny service to a Subscriber with a negative credit or service history with the Company, which may include non-payment of bills or theft or damage to Company equipment, or who has threatened or assaulted Company employees during their employment. If service is denied, the Company will give written notice to the Subscriber of the right to appeal to the Department, the Company's decision to deny service. The Department's decision may be appealed to the Board pursuant to Section 15.15.
- 10.5 Except as otherwise provided in the Franchise Ordinance, the Company shall furnish and maintain service to each person who requests service regardless of where the person lives in the Franchise Area.
- 10.6 A Company shall not deny, delay or otherwise burden service or discrimination against Subscribers or users on the basis of age, race, creed, religion, handicap, sex, disability, national origin, marital status, political affiliation, sexual orientation, and income level, place of residence, or gender identity or expression.
- 10.7 A Company shall not refuse to employ, nor discriminate in its employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment, because of age, race, creed, religion, handicap, sex, disability, national origin, marital status, political affiliation, sexual orientation, income level, place of residence, or gender identity or expression.

## **11. SUBSCRIBER DISCONNECTION AND DOWNGRADES**

- 11.1 A Subscriber shall have the right to disconnect or downgrade service at any time. No charges for service may be made after the Subscribers requests disconnection, nor may any period of notice before voluntary termination or downgrade of cable service be required of Subscribers. There will be no charge for disconnection.
- 11.2 A Subscriber requesting a downgrade or disconnection may request that the Company disconnect its equipment and restore the Subscriber's television equipment to its pre-installation condition. If the Company cannot restore the Subscriber's equipment to its pre-installation due to the loss, deterioration, or misplacement of necessary equipment, the Company shall be excused from the restoration. Where the installation resulted in an improvement in the Subscriber's wiring or where the Subscriber requests that no work be done, the Company shall be excused from the restoration.

- 11.3 The disconnection appointment must occur within seven (7) business days following the Subscriber's disconnection request. The Company, at its option, may provide the Subscriber with postage paid mailers for return of the Franchisee equipment in lieu of the pick-up. The Company shall not initiate a collection action against a Subscriber due to the failure to return equipment unless the Company has first complied with the procedures set forth in this Section.

## **12. DEPOSITS, REFUNDS, AND CREDITS**

- 12.1 The Company may require refundable deposits where necessary to protect equipment or to ensure payment where there is reasonable evidence of a nonpayment risk, provided that the Company shall pay simple interest at a rate of one-half percent (1/2 %) per month (6% per year). Such interest shall accrue annually and be payable upon service termination. Upon service termination for any reason, Subscribers will be entitled to receive a refund or credit against amounts owed the Company equal to the deposits plus accumulated interest. The Board may be petitioned to modify the interest rate to reflect prevailing market rates.
- 12.2 The deposits retained by the Company shall appear and be itemized on each Subscriber bill after payment of the deposit. Not less than annually on a calendar year basis, the Company shall provide each Subscriber with an itemized explanation of the interest amount accrued upon the Subscriber deposit(s) during that year either in a separate statement or as part of one of the monthly bills. If, at any time, the deposit is applied to a Subscriber's outstanding balance, the deposit interest shall be prorated.
- 12.3 Refund checks will be issued promptly following resolution of the event giving rise to the refund, and by the earlier of:
- a. The Subscriber's next billing cycle; or
  - b. Thirty (30) days after resolution; or
  - c. The equipment supplied by the Company is returned.
- 12.4 If the Company does not mail a refund check (including applicable interest) to any Subscriber disconnecting service with an outstanding credit within 30 days of the date service is ended, and the Subscriber has returned all Company-owned equipment, the Subscriber is entitled to receive an automatic \$25.00 payment, in addition to the total refund (and applicable interest) due. If the Company fails to provide the refund check within 45 days after the date services has ended the payment shall be increased by \$2.00 a day until it is paid. The City may direct the Company to provide the payment as well as any outstanding refund (and applicable interest) due.
- 12.5 Credits for service will be issued no later than the Subscriber's next billing cycle following the credit being incurred.



### **13. RATES, FEES, AND CHARGES**

- 13.1 The Company shall not, except as expressly permitted by law, impose any fee or charge on a Subscriber for: (A) a service call at Subscriber's premises to perform any repair or maintenance work related on Company installed equipment, except for work required by a negligent or wrongful act of the Subscriber; or (B) the disconnection of any services to a Subscriber, provided that the Company may impose appropriate charges if, during disconnection, Company equipment is not returned or the Subscriber has not paid all outstanding fees and charges due to the Company; or Company equipment is damaged, excluding normal wear and tear.
- 13.2 All service charges must be applied on a nondiscriminatory basis recognizing that the 1992 Cable Act allows for reasonable discounts to senior citizens and the economically disadvantaged and that the Company may conduct promotional campaigns in which rates are discounted or waived, and may offer bulk rate discounts for multiple dwelling units, hotels, motels, and similar institutions.
- 13.3 The Department may conduct periodic performance evaluations of a Company. A Company shall fully cooperate with these evaluations. If the Department implements a Subscriber survey in connection with a performance evaluation, the Department may require a Company to distribute the Department's questionnaire to its Subscribers at Department expense. Upon request and upon reimbursement of Department copying charges, the Company may receive copies of all responses, which may be redacted by the Department to eliminate identifying information.
- 13.4 The Company shall offer all Subscribers the option of obtaining a device by which the Subscriber can block the audio and video of a particular channel during periods selected by the Subscriber.
- 13.5 The Company shall offer Subscribers without cost a security feature, such as a security number selected by an adult representative of the household, to ensure against the ordering of unauthorized Pay-Per-View programming.

### **14. PRIVACY PROTECTIONS**

- 14.1 The Company shall comply fully with all applicable local, state and federal laws concerning the protection of Subscriber privacy. The Company shall not disclose any information about a Subscriber for any purpose except where required by law or by subpoena, except as authorized under 47 U.S.C. 551(c).
- 14.2 The Company shall seek only that personally-identifiable information necessary to confirm a Subscriber's identity. A Company may not deny service to a Subscriber who fails to provide a driver's license number. However, the Company may deny service if a Subscriber fails to produce any verifiable personally-identifiable information after being requested to do so.

- 14.3 The Company shall not monitor the transmission of Video Programming to determine the individual's viewing patterns or practices of any Subscriber without prior written consent of that Subscriber, except as otherwise permitted by the Franchise Ordinance or by law.

## **15. ENFORCEMENT AND APPEAL**

- 15.1 A violation of these Standards may be considered a material breach of the Franchise Ordinance which may lead to revocation of a Franchise in accordance with the procedures set forth in the Franchise Ordinance.

- 15.2 Notice of Violation. If the Department finds that a Company may have violated these Standards, it will issue a written notice of violation to the Company. The Notice shall contain:

- a. A clear statement of the Standard violated;
- b. The basis for the Department's conclusion why the Standard is violated and the general facts upon which the allegations are made. The Department shall not be required to set forth all of the evidence upon which it bases its conclusion that the Standard has been violated. Rather, it needs to provide sufficient detail so that the Company is made generally aware of the basis for the charges against it.
- c. The corrective action sought by the Department;
- d. The penalties sought by the Department;
- e. A statement that if this matter is not promptly resolved that the corrective action and the penalties sought shall be imposed 90 calendar days after the date of issuance of the Notice; and
- f. The notice may contain a provision that if the corrective action is taken by a date certain that the matter will be considered closed with no penalties or other actions sought.

- 15.3 Response by Company. Within thirty (30) calendar days of the date of issuance of the Notice of Violation, the Company shall file a written response with the Department. The written response shall consist of one of the following:

- a. A statement by the Company that without admitting the accuracy of the violations that it will undertake the corrective action sought by the Department and accepts the penalties, damages, service revocations and conditions sought by the Department; or
- b. If the Company challenges the notice, a response and request for appeal to the Board. The request shall contain the following:
  - 1. A clear, detailed statement why it disputes the Department's conclusion that the Standard has been violated and the facts to support the Company's position. The Company may attach written documentation to its response.

2. Without admitting the accuracy of the violations, a clear, detailed statement about what corrective action and penalties, damages, and service conditions the Company is willing to accept.

This response and request for appeal shall be served on the Department, with an additional copy served on the City Attorney and six additional copies served on the Board Secretary.

- 15.4 Reply by Department. Within twenty-one (21) business days of the date of issuance of the response by the Company, the Department shall provide a written reply to the Company. The Department may attach written documentation to its reply. The Department shall serve copies of its reply on the City Attorney and six copies on the Board Secretary.

The Department shall schedule a hearing with the Board and provide notice to the Company consistent with the Brown Act.

- 15.5 Hearing Before the Board. The Board shall then set a hearing date to hear the appeal. No later than three (3) business days before the hearing date, the Department and the Company may submit additional written materials to be considered.

- 15.6 Ex Parte Communication. Neither the Company nor the Department may have ex parte communication with the Board concerning a pending appeal.

- 15.7 The Board after considering the evidence submitted and the arguments shall issue a written decision containing the Board's conclusions and its reasons for those conclusions. An adverse decision against the Company is not effective until ninety (90) calendar days after the issuance of the initial Notice of Violation by the Department.

- 15.8 Final Decision. The Board's decision shall become final consistent with Section 245 of the City Charter.

- 15.9 Meet and Confer. In an effort to resolve this matter informally, the Company and the Department are required to meet and confer at least two times. The meet and confer sessions may be conducted telephonically. The Company and the Department may jointly request that the Board hearing be deferred pending discussions.

- 15.10 Except as otherwise provided in the Franchise Ordinance, for each violation of a Subscriber Service Standard, penalties may be imposed as follows and shall not be charged or passed-through to Subscribers:

- a. Two hundred dollars (\$200) for each day of each violation, not to exceed six hundred dollars (\$600) for each occurrence of violation.
- b. If there is a subsequent violation of the same provision within twelve (12) months, four hundred dollars (\$400) for each day of each violation, not to

exceed twelve hundred dollars (\$1200) for each occurrence of the violation.

- c. If there is a third or additional violation of the same provision within twelve (12) months of the first, one thousand dollars (\$1000) for each day of each violation, not to exceed three thousand dollars (\$3000) for each occurrence of the violation.

15.11 Any penalty assessed under this Section will be reduced dollar for dollar to the extent the City exercises any liquidated damage provision of a Franchise Ordinance and imposes a monetary obligation on a Franchise for the same customer service failure, and no other monetary amount may be assessed, except where provided by Franchise Ordinance.

15.12 Penalties under this Section shall be imposed pursuant to procedures set forth in Cal. Govt. Code Sec. 53088, et seq. Penalties may be in addition to other relief that may be imposed.

15.13 The Board may in addition to imposing penalties impose restitution, require written notice to Subscribers and seek other appropriate relief.

15.14 The City may seek injunctive relief or any other judicial remedy available pursuant to state or federal law in order to enforce compliance with these Standards.

15.15 Appeals to Board.

- a. Where there is an appeal to the Board pursuant to Section 8.7, 10.2 or 10.4, the party seeking the appeal shall file with the Board Secretary, the City Attorney, and the Department a written statement setting forth the basis for the appeal.
- b. The party on the other side within ten (10) business days of receipt of written statement shall file a response detailing its reasons for its decision.
- c. The appealing party then may but is not required to reply. If it chooses
- d. The requirements of Sections 15.5, 15.6, 15.7, 15.8 and 15.9 shall apply, except the last sentence of 15.7 shall not apply. Where the terms "Department" and "Company" are used in these five sections, as appropriate they shall be construed for the purpose of this section only to refer to the appealing parties.

## **16. RIGHTS RESERVED BY THE CITY**

16.1 The City reserves the right to establish additional, reasonable Subscriber Service Standards or to revise these Standards as is necessary, after making a finding of need and after providing notice to the Company and the opportunity to be heard from the Company.

- 16.2 The City reserves the right to regulate rates for Cable Service to the fullest extent permitted by law.
- 16.3 The City reserves the right to enact and enforce Subscriber Service Standards for all Companies in The City of Los Angeles for the protection of the Subscribers.
- 16.4 The Bill of Rights, which are not part of the Standards but are contained as an Appendix to these Standards, may be amended by the Board after providing notice and opportunity to be heard.
- 16.5 Reporting format. Where a Standard requires a report to be submitted to the Department, the Department may specify a reporting format to be used.
- 16.6 Severability. Should any portion of these Standards be stayed or determined to be void or unenforceable, such portion shall be severed from the whole and the remaining Standards shall continue in effect.
- 16.7. These Standards shall become effective 30 days following execution of new agreements for all Franchise Areas in the City or January 1, 2006, whichever is sooner. Provided, however, that section 1.21 of these Standards shall not become effective until June 30, 2006. These Standards shall supercede and replace the Multichannel Video Provider Consolidated Consumer Service Standards previously adopted on October 21, 1994.

**ATTACHMENT B**

**CITY OF LOS ANGELES'  
COMMENTS TO FCC NPRM – 05-311**

**SUBSCRIBER BILL OF RIGHTS**

**CITY OF LOS ANGELES**

**BOARD OF INFORMATION TECHNOLOGY COMMISSIONERS**

**Subscriber Bill of Rights**

As a cable television consumer, you have the following rights:

1. You have the right to receive high-quality cable television service including a clear picture and sound.
2. You have the right to receive dependable service, free of unnecessary outages. You are entitled to a credit of one day service when there is a service outage that lasts over four (4) hours and affects 100 or more subscribers.
3. Spanish-speaking consumers have the right at all times to speak to a Spanish-speaking company representative. The cable operators must also have foreign language capability for callers.
4. You must be notified at least 48 hours before any scheduled interruption of cable television service that occurs between 6:00 a.m. and 12:59 a.m.
5. You have the right to receive at least 30 day's notice of any planned changes in programming, channel line-up, rates or terms of service.
6. You have the right to speak with a customer service representative in person or by telephone within a reasonable amount of time for professional and knowledgeable assistance.
7. You have the right to receive an appointment within 7 days of your order for a standard installation service or upgrade.
8. You have the right to schedule service appointments at a reasonable time of the day, not to exceed a 4-hour appointment window.
9. You have the right to an accurate monthly bill containing all pertinent information including: payment due date, an itemized listing of all charges and fees.
10. You have the right to disconnect service at no charge, except for the payment of any outstanding account balance.
11. You have the right to have appointments honored by the cable operator. An appointment may not be cancelled by the cable operator after close-of-

business of the day prior to the appointment without reasonable attempts to contact you.

12. You have the right to receive a copy of the work order describing all work performed during an appointment.
13. You have the right to service regardless of where you live in the City.
14. Persons with disabilities have the right to maximum possible accommodation of the services and facilities of the cable system. This shall include, but is not limited to, unhindered access to equipment and services generally provided by a cable operator

**If you have questions or complaints about customer service, you can write or call:**

**Cable Franchise Division  
Information Technology Agency  
City of Los Angeles  
200 North Main Street, Room 1255  
Los Angeles, CA 90012  
Phone: (213) 922-8370  
[itacable@ita.lacity.org](mailto:itacable@ita.lacity.org)**



**ATTACHMENT C**

**CITY OF LOS ANGELES'  
COMMENTS TO FCC NPRM – 05-311**

**BUILD SCHEDULE FOR ALL  
FRANCHISE AREAS  
(A – N)**

**BUILD SCHEDULE FOR  
FRANCHISE AREA A**

APPENDIX B

CONSTRUCTION/ACTIVATION PLAN

I. CONSTRUCTION TERMS

A. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plant of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
  - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by the original owner, the new pole should preferably retain the same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate

number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/4" long with figures 0.4".

#### B. Specific Terms

1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.
3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the

System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section, "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:

- vacant or abandoned buildings;
- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the system; and
- such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section : (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation", "activated", etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the headends or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the System to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered finally complete until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of Subscriber Service.

## II. CONSTRUCTION SCHEDULE AND SEQUENCE

### A. Construction Schedule

1. The current construction schedule of the Franchisee, with a target date schedule, and any modifications thereto approved by the Board, shall be set forth as Exhibit 1 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and the franchise Agreement. The Franchisee shall complete the converter change-out for the entire system by no later than the date specified in Exhibit 1. Any change which may affect the schedule for the converter change-out must be submitted to the Board for consideration and approval. The Board may grant reasonable extensions of said schedule upon a finding that such extensions are warranted. Such determination on extensions may be appealed to the Council.
2. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the general public residing in the Franchise Area resulting from failure by the Company to modify in a timely manner, the technical limitation created by incompatible converters and resulting duplicated channels. Therefore, liquidated damages for failure to meet the scheduled target dates for the converter change-out shall accrue at the amount of \$500.00 per day, every calendar day, for missed target dates and an additional \$1000.00 per day, every calendar day, for delay beyond the final completion date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any extensions to the schedules in Exhibit 1 granted by the Board, unless the Board finds that such extensions are warranted as a result of force majeure or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
3. If an extension is given by the Board and the Franchisee achieves the converter change-out in less time than as authorized by the extension, the Franchisee shall be proportionally reimbursed for any related prior liquidated damages assessed and paid for such an extension.

### B. Construction Sequence

NOT NECESSARY FOR THE CONVERTER CHANGE-OUT

**EXHIBIT 1 TO APPENDIX B**

**Construction and Converter Change-out Schedule**

WEST SAN FERNANDO VALLEY CONVERTER CHANGE-OUT SCHEDULE

Change-out of Zenith converters for Jerrold converters.

## NUMBER OF ZENITH CONVERTERS REMAINING IN SERVICE

1988	<u>JAN 1</u> Plan/ Actual	<u>MAR</u> Plan/ Actual	<u>JUN</u> Plan/ Actual	<u>SEP</u> Plan/ Actual	<u>DEC</u> Plan/ Actual
	26400/ 22619	25800/ 19443	25200/ 15642	24500/ 0	23600/ COMPLETED
1989	<u>JAN 1</u> Plan/ Actual	<u>MAR</u> Plan/ Actual	<u>JUN</u> Plan/ Actual	<u>SEP</u> Plan/ Actual	<u>DEC</u> Plan/ Actual
	23600/	22700/	21800/	20700/	19200/
1990	<u>JAN 1</u> Plan/ Actual	<u>MAR</u> Plan/ Actual	<u>JUN</u> Plan/ Actual	<u>SEP</u> Plan/ Actual	<u>DEC</u> Plan/ Actual
	19200/	17700/	16200/	14600/	12800/
1991	<u>JAN 1</u> Plan/ Actual	<u>MAR</u> Plan/ Actual	<u>JUN</u> Plan/ Actual	<u>SEP</u> Plan/ Actual	<u>DEC</u> Plan/ Actual
	12800/	11000/	9200/	7400/	5600/
1992	<u>JAN 1</u> Plan/ Actual	<u>MAR</u> Plan/ Actual	<u>JUN</u> Plan/ Actual	<u>SEP</u> Plan/ Actual	
	5600/	3500/	1400/	0/	



**BUILD SCHEDULE FOR  
FRANCHISE AREA B**

APPENDIX B

CONSTRUCTION/ACTIVATION PLAN

I. CONSTRUCTION TERMS

A. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plant of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
  - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the

pole is replaced by the original owner, the new pole should preferably retain the same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/2" long with figures 0.4".

B. Specific Terms

1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.

11/4/87

3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section, "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:

- vacant or abandoned buildings;
- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the system; and
- such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation", "activated", etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the headends or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the System to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered

finally complete until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of Subscriber Service.

C. Reconstruction Requirements

1. The Franchisee required to reconstruct its system in compliance with this franchise shall design the system capable of being upgraded to a 450 MHz system. Spacing for amplifiers and related electronic equipment shall be designed and constructed to accommodate 450 MHz equipment.
2. As part of the construction sequence plan required in Section II.B. hereof, the Franchisee shall prepare a cut over plan indicating the sequence in which subscribers will be disconnected from the old system plant and reconnected to the new system plant. The time subscribers are without service should be minimal. The Franchisee shall provide credit to any subscriber who is without service for more than one day of prime time viewing.

II. CONSTRUCTION SCHEDULE AND SEQUENCE

A. Construction Schedule

1. The Franchisee shall file a construction plan acceptable to the Department within 6 months from the effective date of the franchise, unless the filing date is extended by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and plant activation for the rebuild construction. For system upgrades, including converter change outs, similar information appropriate to the form of the upgrade shall be delineated.
2. Activation Milestones. The Franchisee shall develop an activation milestone schedule in quarter year increments based upon the construction plan required by the foregoing Section II.A.1. The initial version of the milestone schedule, and any modification to said initial milestone schedule shall, upon its approval by the Board, be set forth as Exhibit 1 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and the franchise Agreement. The Franchisee shall complete and activate the entire system throughout the Franchise Area by no later than the date specified in Exhibit 1.

3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the general public residing in the Franchise Area by not having available the Services proposed by the Construction of the System in accordance with the construction plan, activation milestone schedule and construction sequence plan required pursuant to Section 4.14 and Appendix B herein. Therefore, liquidated damages of \$1,000.00 per day, every calendar day, will be assessed for failure to meet the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the scheduling in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
4. Construction of the System shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced the offering and distribution of the full range of Services throughout the Franchise Area. The temporary exception area or other abatement of the Company's service obligations pursuant to Sections 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements. The plan shall consist of a map of the entire Franchise Area and shall clearly delineate the following:
  - (i) The areas within the Franchise Area where the cable System will be initially available to subscribers, including a schedule of Construction as proposed; and
  - (ii) Areas within the Franchise Area where extensions of the cable System cannot reasonably be done due to the lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 6 months of the effective date of this franchise. This plan shall delineate the sequence of the construction or upgrade

within the Franchise Area. The sequence areas should be designated using street names as boundaries.

2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without the prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations from the approved initial sequence plan.
3. The initial version of, and any modification to, the construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
4. Actual physical Construction may not commence prior to the submission of the construction plan (II.A.1.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.1.).
5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

**BUILD SCHEDULE FOR  
FRANCHISE AREA C**



APPENDIX BCONSTRUCTION/ACTIVATION PLANI. CONSTRUCTION TERMSA. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plant of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
  - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by the original owner, the new pole should preferably retain the same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.
  - b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in

multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.

- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/4" long with figures 0.4".

#### B. Specific Terms

1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.
3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Agency for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section, "extraordinary circumstances" means that the Agency has made a finding that, at a minimum, there exists:

-- vacant or abandoned buildings;

- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the System; and
- such other conditions as the Agency and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Agency shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section : (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation", "activated", etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the headends or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the System to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered finally complete until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of Subscriber Service.

## **II. CONSTRUCTION SCHEDULE AND SEQUENCE**

### **A. Construction Schedule**

1. The current construction schedule of the Franchisee, with an activation milestone schedule and any modification thereto approved by the Board, shall be set forth as Exhibit 1 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and the franchise Agreement. The Franchisee shall complete and activate the entire system throughout the Franchise Area by no later than the date specified in Exhibit 1.

2. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the general public residing in the Franchise Area by not having available the services proposed by the Construction of the System in accordance with the construction plan, activation milestone schedule and construction sequence plan required pursuant to Section 4.14 and Appendix B herein. Therefore, liquidated damages for failure to meet such accepted construction schedules shall accrue at the amount of \$500.00 per day, every calendar day, for each missed activation milestone and an additional \$1,000.00 per day, every calendar day, for delay beyond the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the schedules in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Agency of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
3. If the Board grants extensions of time for activation milestones or the date for final completion and activation, the Franchisee, shall for each extension granted, pay to the City an amount to be determined by the Board and equivalent to the perspective revenue lost by the City in franchise fees as a result of the Franchisee not meeting the schedule of each extension thereof.
4. Construction of the System shall be considered completed when the Company has notified the Agency, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced offering and distribution of the full range of Service throughout the Franchise Area. The temporary exception areas or other abatement of the Company's service obligations pursuant to Sections 4.3 and 5 of this Agreement shall not prevent the issuance by the Agency of either of the foregoing written acknowledgments of completion and such acknowledgments may be issued subject to any such abatements. The plan shall consist of a map of the entire Franchise Area and shall clearly delineate the following:
  - (i) The areas within the Franchise Area where the cable system will be initially available to Subscribers, including a schedule of Construction as proposed; and
  - (ii) Areas within the Franchise Area where extensions of the cable System cannot reasonably be done due to the lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

**B. Construction Sequence**

1. The current construction sequence plan, and any modification thereto approved by the Agency, shall be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
2. The Franchisee shall not materially deviate from the current plan for the sequence of Construction without the prior approval of the Agency provided that the Franchisee shall provide to the Agency a written explanation and justification for deviations from the approved initial sequence plan.
3. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

EXHIBIT 1 TO APPENDIX B  
CONSTRUCTION AND ACTIVATION MILESTONE SCHEDULE  
QUARTER YEAR INCREMENTS

(AREA C)

EAST SAN FERNANDO VALLEY CONSTRUCTION MILESTONE SCHEDULE\*

Fourth Revision, 10/14/87

Planned 11/1/88	1988				TOTAL DEC	
	<u>IAN 1</u>	<u>MAR</u>	<u>JUN</u>	<u>SEP</u>		
	Plan	Plan	Plan	Plan	Plan	Rev.
MAKE READY 930 Clear	926	930 **				
STRAND 879	738	828	879	879 **		
UNDERGROUND 66 CABLE		42	49	57	66 **	
AERIAL CABLE 804	680	754	804	804 **		
SPLICING 870	709	789	870	870 **		
ACTIVATION 870	566	646	751	856	870 **	

\* Mileages shown are accumulated for each quarter.

\*\* Complete

**BUILD SCHEDULE FOR  
FRANCHISE AREA D**



APPENDIX B

CONSTRUCTION/ACTIVATION PLAN

I. CONSTRUCTION TERMS

A. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plant of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
  - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by the original owner, the new pole should preferably retain

the same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/2" long with figures 0.4".

**B. Specific Terms**

- 1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
- 2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.

3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section, "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:

- vacant or abandoned buildings;
- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the system; and
- such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation", "activated", etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the headends or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the System to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered finally complete

until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of Subscriber Service.

C. Reconstruction Requirements

1. The Franchisee required to reconstruct its system in compliance with this franchise shall design the system capable of being upgraded to a 450 MHz system. Spacing for amplifiers and related electronic equipment shall be designed and constructed to accommodate 450 MHz equipment.
2. As part of the construction sequence plan required in Section II. B. hereof, the Franchisee shall prepare a cut over plan indicating the sequence in which subscribers will be disconnected from the old system plant and reconnected to the new system plant. The time subscribers are without service should be minimal. The Franchisee shall provide credit to any subscriber who is without service for more than one day of prime time viewing.

II. CONSTRUCTION SCHEDULE AND SEQUENCE

A. Construction Schedule

1. The Franchisee shall file a construction plan acceptable to the Department within 6 months from the effective date of the franchise, unless the filing date is extended by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and plant activation for the rebuild construction. For system upgrades, including converter change outs, similar information appropriate to the form of the upgrade shall be delineated.
2. Activation Milestones. The Franchisee shall develop an activation milestone schedule in quarter year increments based upon the construction plan required by the foregoing Section II.A.1. The initial version of the milestone schedule, and any modification to said initial milestone schedule shall, upon its approval by the Board, be set forth as Exhibit 1 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and the franchise Agreement. The Franchisee shall complete and activate the entire system throughout the Franchise Area by no later than the date specified in Exhibit 1.

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3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the general public residing in the Franchise Area by not having available the Services proposed by the Construction of the System in accordance with the construction plan, activation milestone schedule and construction sequence plan required pursuant to Section 4.14 and Appendix B herein. Therefore, liquidated damages of \$1,000.00 per day, every calendar day, will be assessed for failure to meet the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the scheduling in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
4. Construction of the System shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced the offering and distribution of the full range of Services throughout the Franchise Area. The temporary exception area or other abatement of the Company's service obligations pursuant to Sections 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements. The plan shall consist of a map of the entire Franchise Area and shall clearly delineate the following:
  - (i) The areas within the Franchise Area where the cable System will be initially available to subscribers, including a schedule of Construction as proposed; and
  - (ii) Areas within the Franchise Area where extensions of the cable System cannot reasonably be done due to the lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 6 months of the effective date of this franchise. This plan shall delineate the sequence of the construction or upgrade within the Franchise Area. The sequence areas should be designated using street names as boundaries.
2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without the prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations from the approved initial sequence plan.
3. The initial version of, and any modification to, the construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
4. Actual physical Construction may not commence prior to the submission of the construction plan (II.A.1.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.1.).
5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

**BUILD SCHEDULE FOR  
FRANCHISE AREA D - OVS**

## APPENDIX B

### SYSTEM CONSTRUCTION PLAN AND CONSTRUCTION SCHEDULES

#### I. CONSTRUCTION TERMS

##### A. Location of Cable

1. Franchisee shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or other System Facilities are underground at a particular location (other than on private property), Franchisee shall install its cables underground, except as otherwise provided in Chapter 4 of this Franchise Agreement and this Appendix B or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or other System Facilities are above ground at a particular location, Franchisee may elect to install its cables above ground.
2. Franchisee shall use existing utility or Cable Services operator controlled poles, ducts or conduits for the installation of cable, except as provided in Subsection 4.20.01 of this Franchise Agreement. All poles placed by Franchisee shall be tagged in the manner required by the appropriate governing entity

##### B. Specific Terms

1. As provided in this Franchise Agreement, Franchisee shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the Construction of the System.
2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.
3. Franchisee shall construct the System so as to meet the all Service obligations set forth in this Franchise Agreement. In the event that Franchisee encounters extraordinary circumstances in connection with the Construction or operation of the System, Franchisee may, pursuant to Section 4.3 of this Franchise Agreement, apply to the Agency for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of Franchisee until said



circumstances cease. For purposes of this Section "extraordinary circumstances" means that the Agency has made a finding that, at a minimum, there exists:

- (1) vacant or abandoned buildings;
- (2) inability of Franchisee to obtain access (physical or constructive) to a structure;
- (3) situations which substantially and adversely affect the economic viability of the System; or
- (4) such other conditions regarding which the Agency and Franchisee may from time to time reach agreement

In considering a petition for relief under this Section, the Agency shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

C. System Construction Requirements

1. The phrases, "complete Construction," "Construction completion," or derivative phrases, when used with respect to the "Phased Construction Areas" and "segments" of such Phased Construction Areas in which Franchisee intends to offer Service, or when used with respect to the entire System, shall mean that Franchisee has accomplished the following:
  - (1) For aerial Construction, put up all necessary strand and lashed all necessary cable (including trunk and feeder cable);
  - (2) For underground Construction, laid all cable in conduit and refilled all trenches, restored all road surfaces, and, except where prevented by weather conditions or delayed because of seasons, restored all landscaping;
  - (3) Installed all service node components, amplifier housings and modules, or their equivalents (including the modules for return path Signals);
  - (4) Installed all power supplies, and completed all related bonding and grounding;
  - (5) Installed all necessary connectors, splitters, and taps;

- (6) Completed the Construction of the headend(s) and all hubs and nodes and installed all necessary processing equipment;
  - (7) Completed any and all other Construction necessary for the System to be ready to deliver the OVS Services described in this Franchise Agreement to every residence located in the Phased Construction Area, a segment of the Phased Construction Area to which Franchisee desires to provide commercial Service, or the entire Franchise Area, in a manner meeting all technical performance standards, construction standards, electrical code standards, and other applicable standards and requirements described or referenced in this Franchise Agreement;
  - (8) After meeting all of the requirements described above in this Section, balanced the entire System that has been constructed up to that point in time, and conducted proof-of-performance tests and Signal leakage tests in accordance with Subsection I.C.2 and yielding results satisfying this said subsection;
  - (9) Marketed all categories of OVS Services described in this Franchise Agreement, except "non-mandatory categories of Service," in a comprehensive manner reasonably designed to inform the vast majority of potential Subscribers of the availability of these Services, and begun providing commercially such marketed Service to residents of the Phased Construction Area or the entire System. For purposes of this Franchise Agreement, a "non-mandatory category of Service" shall be any category of Service described in this Franchise Agreement whose description(s) contain(s) language explicitly acknowledging that, if Franchisee is offering a OVS Service or any other Service within the Franchise Area, the determination of whether said category of OVS Service is offered by Franchisee will rest within Franchisee's sole discretion; and
  - (10) With respect to Construction of the entire System, received the Certificate of Completion described in Section 4.2 of this Franchise Agreement;
2. With respect to subparagraph (8) of Subsection I.C.1, above, and the Construction Completion of any Phased Construction Area or the entire Franchise Area, Franchisee shall, within fourteen (14) days of said Construction completion, at a minimum of one (1) test point for each Phased Construction Area, or ten (10) widely separated test points when Franchisee deems that the entire OVS System has been constructed--unless a greater number of test points is mandated by FCC rules or regulations--including any headends or other Signal processing facilities serving City residents, conduct proof-of-performance tests and receive results at each such test point which satisfy performance standards adopted by the FCC or any other agency

having jurisdiction in this matter. Prior to activating Service in any newly constructed section of plant, Franchisee shall also carry out Signal leakage testing of the entire new plant section.

These proof-of-performance and signal leakage tests may be monitored by a representative of the City who, at the representative's option, will verify the conduct of the tests, the implementation of proper test methodologies, and the test results. Consequently, no less than ten (10) days prior to the anticipated date(s) of this proof-of-performance testing pertaining to a Phased Construction Area, Franchisee shall provide written notice to the Agency of the testing date(s) and time(s), so that the Agency may send a representative to monitor said testing.

No less than ten (10) days prior to the anticipated date(s) of the proof-of-performance testing pertaining to completion of Construction for the entire System, Franchisee shall provide written notice to the Agency of tentative testing dates, in order that Franchisee and the Agency may finalize these dates, in accordance with the reasonable availability of the City's representative.

Although the City will bear the cost of having a City representative monitor the initial set of proof-of-performance and Signal-leakage testing; in the event that this testing yields results not meeting applicable standards, Franchisee shall conduct appropriate retesting, as necessary, and reimburse the City for the costs of having a City representative monitor this retesting. This representative may be an independent professional engineer; independent member of the Society of Cable Telecommunications Engineers; or an independent Fellow, Institute for the Advancement of Engineering (FIAE).

In the event that Franchisee reimburses the City for monitoring retesting, as provided in the immediately preceding paragraph, said reimbursement shall not be categorized as a Franchise Fee payment, shall not be charged against Franchise Fees owed to the City, and shall constitute a "requirement or charge incidental to the awarding or enforcing of the Franchise," as defined in subparagraph 2(D) of Section 622(g) of the Communications Act (47 U.S.C. §542(g)). The maximum amount of actual cost reimbursement to the City shall be as follows: (i) for monitoring retesting of Phased Construction Area, up to \$1,500 for each day that the City representative works on the retesting monitoring project; and (ii) up to \$10,000 for monitoring retesting arising out of the claimed Completion of Construction of the entire System.

## II. PHASED CONSTRUCTION OF THE OPEN VIDEO SYSTEM

### A. Construction Schedule; Incentive for Early Construction Completion of the Open Video System

1. Franchisee agrees to Construct its Open Video System in a series of eight (8) "Phased Construction Area Segments" or "Segments" that will be Completed in annual increments over a period not to exceed eight (8) years. On average, each OVS System Segment will be designed by Franchisee to constitute approximately twelve percent (12%) of the total plant mileage of the Open Video System. City and Franchisee agree to an annual review to assure that cumulative construction percentages are being achieved. In recognition of start-up delays that Franchisee may encounter during the first year of the Franchise, Franchisee shall not be required to complete a Segment during that first year. However, Franchisee agrees that it will complete no less than two (2) Segments by the second anniversary date of the Effective Date. By the fourth anniversary date of the Effective Date, Franchisee shall complete no less than four (4) Segments. By the sixth anniversary date of the Effective Date, Franchisee shall complete no less than six (6) Segments. (A map of the Franchise Area is attached as Exhibit 1 to this Appendix B.)

However, the City Council desires to make available to City residents, at the earliest practicable date, the anticipated benefits to be derived from competitive video and telecommunications services. As an incentive to Franchisee to expedite the deployment of the OVS System throughout the Franchise Area, the City will extend the Franchise for an additional five-year term, as provided for in this Appendix B, if Franchisee completes construction of the System within sixty (60) months of the Effective Date. If the requirements for extension of the Franchise term are not satisfied by Franchisee, then the term of the Franchise will remain at ten (10) years.

To facilitate the achievement of the expedited System Construction, the parties will--24 months, 36 months, and 48 months after the Effective Date--prepare and submit to the City Council a report concerning the status of System Construction. Each of these status reports will contain information concerning the System mileage that has been constructed, the System mileage that remains to be constructed, whether accelerated deployment of the System is occurring, and the likelihood that the System will be completed in its entirety by the expedited time frame's deadline date. If the percentage completion of System mileage is then less than that which would be expected to ensure completion of Construction by the expedited deadline, then Franchisee must fully describe the reasons for that shortfall. Upon receipt and review of these reports by the City Council, such directives may be given to Franchisee as may be appropriate under the circumstances.

2. The five-year extension of the Franchise term is expressly conditioned upon Franchisee's satisfaction of the following requirements:

- (1) Construction of the System must be Complete, in accordance with the terms of Section I.C of Appendix B.
- (2) Franchisee must be in full compliance with all other terms and conditions of the Franchise.

B. Penalties for Failure to Timely Construct the OVS System

If Franchisee has not fully completed Construction of the Open Video System within ninety-six (96) months of the Effective Date, and the City does not attribute such noncompletion to "force majeure" or the City does not otherwise excuse this Construction noncompletion, the City may:

- (1) Impose a monetary penalty upon Franchisee in an amount up to \$1000 per day, every calendar day, during the period after the ninety-six (96) month Construction completion deadline during which full System Construction remains incomplete. The City may go against the security fund instruments described in Chapter 4 to collect all or any portion of these monetary penalties.
- (2) Revoke, terminate, or declare a forfeiture of the Franchise in accordance with the procedures specified in Chapter 13 of the Franchise Agreement.
- (3) Give such weight to noncompletion of the Open Video System as may, in the City's sole discretion, be appropriate in determining whether to renew the Franchise, if such renewal has been requested by Franchisee.

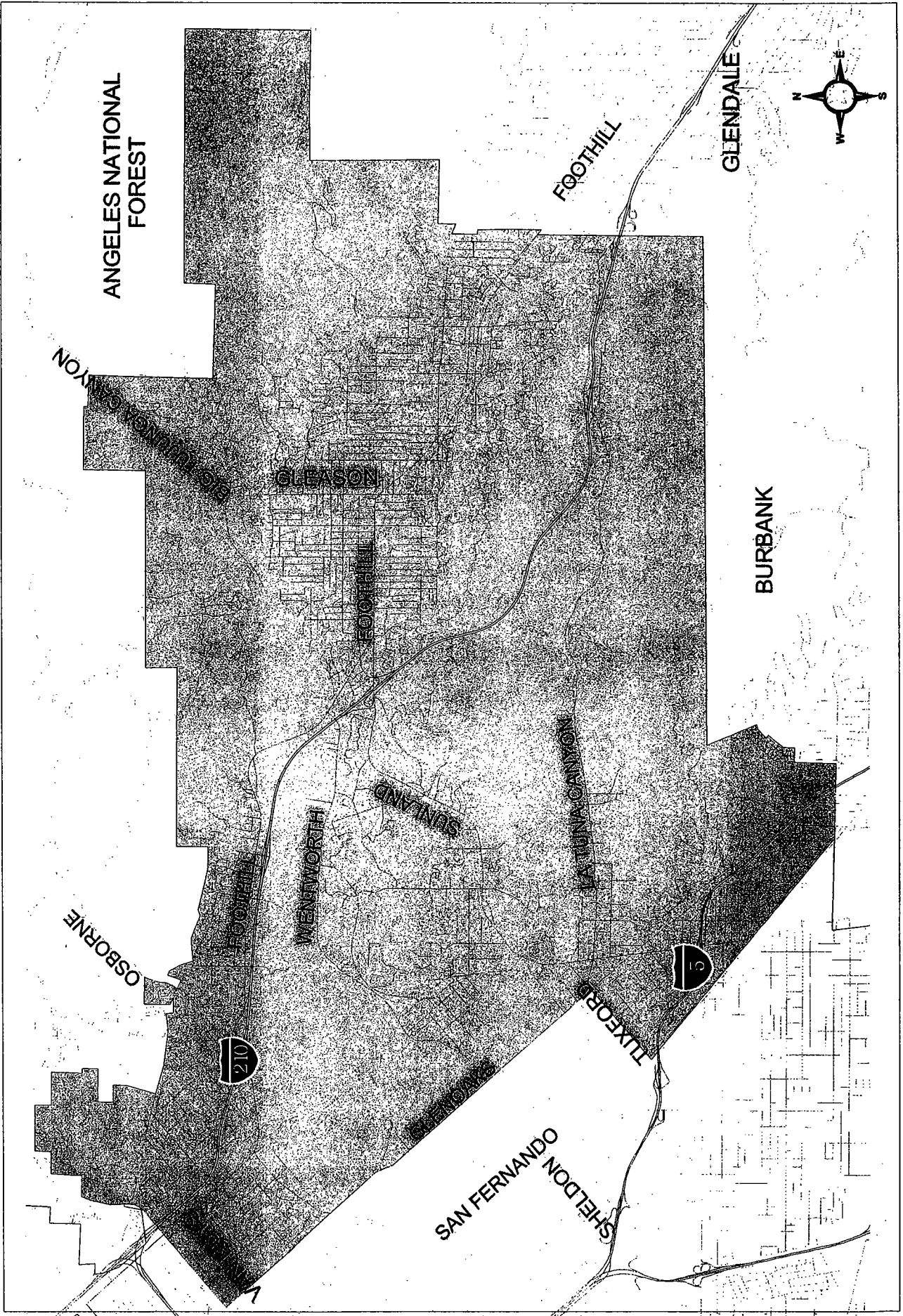
APPENDIX B

EXHIBIT 1

FRANCHISE AREA MAP

APPENDIX B EXHIBIT 1

City of Los Angeles Open Video System Franchise Area D



**BUILD SCHEDULE FOR**  
**FRANCHISE AREA E – SECTION 4.6**



1 be given by the Grantee to each subscriber in such area at  
2 least 15 days prior thereto. If the Board shall find that  
3 public convenience and necessity no longer requires that the  
4 Grantee furnish such service, then the Board shall, after  
5 public hearing as provided herein, authorize suspension or  
6 abandonment on such reasonable terms and conditions as may be  
7 prescribed by the Board.

8 Sec. 4.6 EQUIPMENT AND SERVICE REQUIREMENTS

9 (a) Technical Standards. The cable television  
10 system authorized hereunder shall:

11 (1) Conform to the Class I Channel Technical  
12 Standards set forth by the Federal Communications Commission as  
13 the minimum requirements on all channels carried by the system.

14 (2) Conduct proof-of-performance tests in a  
15 manner prescribed by the Board.

16 (b) Basic Services. The cable television system  
17 authorized hereunder shall:

18 (1) Relay to subscriber terminals those  
19 broadcast signals required by the Federal Communications  
20 Commission;

21 (2) Distribute in color all television signals  
22 which it receives in color;

23 (3) Have a minimum downstream capacity of 25  
24 channels within 36 months of the effective date of this  
25 ordinance. Failure to comply with this requirement will result  
26 in an adjustment of the rates the Grantee may charge for  
27 service;

28 (4) Provide a minimum of one combined access  
29 channel initially and expand to a maximum of four access  
30 channels, one channel each for municipal, educational, public  
31 and leased access, as required by the Board;

32 (5) Have two-way capacity within 36 months of

1 the effective date of this franchise or at such time as may be  
2 extended by the Board;

3 (6) Maintain and have available for public use  
4 at least the minimal equipment and facilities necessary for the  
5 production and programming of a public access channel. This  
6 facility shall be located within the franchise area unless  
7 otherwise authorized by the Board.

8 (c) Non-basic Services. The cable television system  
9 authorized hereunder may:

10 (1) Transmit original cablecast programming not  
11 received through television broadcast signals;

12 (2) Transmit television pictures, film and  
13 video-tape programs, not received through broadcast television  
14 signals, whether or not encoded or processed to permit  
15 reception by only selected receivers or subscribers;

16 (3) Transmit any additional broadcast signals  
17 permitted by the Federal Communications Commission;

18 (4) Transmit and receive all other signals;  
19 digital, voice and audio-visual, etc.

20 (d) Municipal Services.

21 (1) With respect to local government access,  
22 the Grantee shall provide, at the request of the Board and upon  
23 City reimbursement of Grantee's actual cost, use of Grantee's  
24 studio, equipment and technical services for production of live  
25 and video-taped municipal programs, subject to scheduling  
26 requirements of the Grantee;

27 (2) With respect to the basic television  
28 service, the Grantee shall provide a drop and all subscriber  
29 services, without cost, when the system passes such facilities  
30 and as designated by the Board, to:

31 (i) public schools and community colleges  
32 within the City, and

1 (ii) buildings owned and controlled by the  
2 City, used for public purposes and not for residential use.

3 (e) Public Benefit Services. At such time as the  
4 Board determines it to be in the public interest, the Grantee  
5 may be required to provide:

6 (1) Viewing centers and/or communications  
7 thereto;

8 (2) Connection to municipal access studios;

9 (3) Connection to education facilities;

10 (4) Connection to public health facilities;

11 (5) Interconnection with other communications  
12 systems;

13 (6) Program origination, including children and  
14 senior citizen programs.

15 (f) Interconnection. The Grantee will be required  
16 to provide interconnection to City franchisees and other nearby  
17 cable television systems at the time and to the extent and in  
18 the manner specified by the Board, after the Board has  
19 conducted public hearings on the matter to determine the need  
20 and viability of an interconnect system.

21 (g) System Consolidation. The Grantee shall obtain  
22 Board approval prior to the consolidation and/or elimination of  
23 any headend.

24 Sec. 4.7 CUSTOMER SERVICE. Subject to such regulations  
25 as may be adopted by the Board pursuant to Section 4.1 hereof,  
26 the Grantee shall:

27 (a) Maintain a high standard of courtesy in customer  
28 relations at all times;

29 (b) Maintain a log showing the date, approximate  
30 time and duration, type and probable cause of all headend,  
31 trunk or distribution line service failures due to causes other  
32 than routine testing or maintenance; such log shall be subject

**BUILD SCHEDULE FOR  
FRANCHISE AREA F**

APPENDIX BCONSTRUCTION/ACTIVATION PLANI. CONSTRUCTION TERMSA. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plant of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
  - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by

the original owner, the new pole should preferably retain the same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/2" long with figures 0.4".

#### B. Specific Terms

- 1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
- 2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.

3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section, "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:

- vacant or abandoned buildings;
- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the system; and
- such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation", "activated", etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the headends or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the System to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered

finally complete until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of Subscriber Service.

C. Reconstruction Requirements

1. The Franchisee shall reconstruct or upgrade the System to be capable of sixty (60) activated channels before the end of year ten (10) of the Franchise, unless relieved of its obligation to do so by the City. In order to be relieved of this obligation, the Franchisee may petition the City by year eight (8) and present documentation substantiating that said upgrade is not warranted by community needs. Failure to upgrade as directed by this Franchise, unless granted relief from said obligation, shall constitute a material breach pursuant to Section 13 of this Franchise.
2. As part of the construction sequence plan required in Section II B hereof, the Franchisee shall prepare a cut over plan indicating the sequence in which subscribers will be disconnected from the old system plant and reconnected to the new system plant. The time subscribers are without service should be minimal. The Franchisee shall provide credit to any subscriber who is without service for more than one day of prime time viewing.

II. CONSTRUCTION SCHEDULE AND SEQUENCE

A. Construction Schedule

1. The Franchisee shall file a construction plan acceptable to the Department within 6 months from the effective date of the franchise, unless the filing date is extended by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and plant activation for the rebuild construction. For system upgrades, including converter change outs, similar information appropriate to the form of the upgrade shall be delineated.
2. Activation Milestones. The Franchisee shall develop an activation milestone schedule in quarter year increments based upon the construction plan required by the foregoing Section II.A.1. The initial version of the milestone schedule, and any modification to said initial milestone schedule shall, upon its approval by the Board, be set forth as Exhibit 1 to this Appendix B, which



Exhibit shall be incorporated herein and made a part of this Appendix B and the franchise Agreement. The Franchisee shall complete and activate the entire system throughout the Franchise Area by no later than the date specified in Exhibit 1.

3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the general public residing in the Franchise Area by not having available the services proposed by the Construction of the System in accordance with the construction plan, activation milestone schedule and construction sequence plan required pursuant to Section 4.14 and Appendix B herein. Therefore, liquidated damages for failure to meet such accepted construction schedules shall accrue at the amount of \$500.00 per day, every calendar day, for each missed activation milestone and an additional \$1,000.00 per day, every calendar day, for delay beyond the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the schedules in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
4. Construction of the System shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced offering and distribution of the full range of Service throughout the Franchise Area. The temporary exception areas or other abatement of the Company's service obligations pursuant to Sections 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements. The plan shall consist of a map of the entire Franchise Area and shall clearly delineate the following:
  - (i) The areas within the Franchise Area where the cable system will be initially available to Subscribers, including a schedule of Construction as proposed; and
  - (ii) Areas within the Franchise Area where extensions of the cable System cannot reasonably be done due to the lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

## B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 6 months of the effective date of this franchise. This plan shall delineate the sequence of the construction or upgrade within the Franchise Area. The sequence areas should be designated using street names as boundaries.
2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without the prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations from the approved initial sequence plan.
3. The initial version of, and any modification to, the construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
4. Actual physical Construction may not commence prior to the submission of the construction plan (II.A.1.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.1.).
5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

TRB5/02

**BUILD SCHEDULE FOR  
FRANCHISE AREA G**

APPENDIX B

CONSTRUCTION/ACTIVATION PLAN

I. CONSTRUCTION TERMS

A. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plant of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
  - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by the original owner, the new pole should preferably retain

the same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/4" long with figures 0.4".

B. Specific Terms

- 1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
- 2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.

3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section, "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:

- vacant or abandoned buildings;
- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the system; and
- such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation", "activated", etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the headends or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the System to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of

any segment or of the entire System will not be considered finally complete until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of Subscriber Service.

C. Reconstruction Requirements

1. The Franchisee shall reconstruct or upgrade the System to be capable of sixty (60) activated channels before the end of year ten (10) of the Franchise, unless relieved of its obligation to do so by the City. In order to be relieved of this obligation, the Franchisee may petition the City by year eight (8) and present documentation substantiating that said upgrade is not warranted by community needs. Failure to upgrade as directed by this Franchise, unless granted relief from said obligation, shall constitute a material breach pursuant to Section 13 of this Franchise.
2. As part of the construction sequence plan required in Section II B hereof, the Franchisee shall prepare a cut over plan indicating the sequence in which subscribers will be disconnected from the old system plant and reconnected to the new system plant. The time subscribers are without service should be minimal. The Franchisee shall provide credit to any subscriber who is without service for more than one day of prime time viewing.

II. CONSTRUCTION SCHEDULE AND SEQUENCE

A. Construction Schedule

1. The Franchisee shall file a construction plan acceptable to the Department within 6 months from the effective date of the franchise, unless the filing date is extended by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and plant activation for the rebuild construction. For system upgrades, including converter change outs, similar information appropriate to the form of the upgrade shall be delineated.
2. Activation Milestones. The Franchisee shall develop an activation milestone schedule in quarter year increments based upon the construction plan required by the foregoing Section II.A.1. The initial version of the milestone schedule, and any modification to said initial milestone schedule shall, upon its approval by the Board, be set forth as Exhibit 1 to this Appendix B, which

Exhibit shall be incorporated herein and made a part of this Appendix B and the franchise Agreement. The Franchisee shall complete and activate the entire system throughout the Franchise Area by no later than the date specified in Exhibit 1.

3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the general public residing in the Franchise Area by not having available the services proposed by the Construction of the System in accordance with the construction plan, activation milestone schedule and construction sequence plan required pursuant to Section 4.14 and Appendix B herein. Therefore, liquidated damages for failure to meet such accepted construction schedules shall accrue at the amount of \$500.00 per day, every calendar day, for each missed activation milestone and an additional \$1,000.00 per day, every calendar day, for delay beyond the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the schedules in Exhibit 1 approved by the Board; unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
4. Construction of the System shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced offering and distribution of the full range of Service throughout the Franchise Area. The temporary exception areas or other abatement of the Company's service obligations pursuant to Sections 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements. The plan shall consist of a map of the entire Franchise Area and shall clearly delineate the following:
  - (i) The areas within the Franchise Area where the cable system will be initially available to Subscribers, including a schedule of Construction as proposed; and
  - (ii) Areas within the Franchise Area where extensions of the cable System cannot reasonably be done due to the lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.



B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 6 months of the effective date of this franchise. This plan shall delineate the sequence of the construction or upgrade within the Franchise Area. The sequence areas should be designated using street names as boundaries.
2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without the prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations from the approved initial sequence plan.
3. The initial version of, and any modification to, the construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
4. Actual physical Construction may not commence prior to the submission of the construction plan (II.A.1.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.1.).
5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

D/145

**BUILD SCHEDULE FOR  
FRANCHISE AREA H**

APPENDIX B

CONSTRUCTION/ACTIVATION PLAN

I. CONSTRUCTION TERMS

A. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plant of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
  - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by the original owner, the new pole should preferably retain

the same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/2" long with figures 0.4".

#### B. Specific Terms

- 1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
- 2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.

3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section, "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:

- vacant or abandoned buildings;
- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the system; and
- such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation", "activated", etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the headends or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the System to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered

finally complete until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of Subscriber Service.

C. Reconstruction Requirements

1. The Franchisee shall reconstruct or upgrade the System to be capable of sixty (60) activated channels before the end of year ten (10) of the Franchise, unless relieved of its obligation to do so by the City. In order to be relieved of this obligation, the Franchisee may petition the City by year eight (8) and present documentation substantiating that said upgrade is not warranted by community needs. Failure to upgrade as directed by this Franchise, unless granted relief from said obligation, shall constitute a material breach pursuant to Section 13 of this Franchise.
2. As part of the construction sequence plan required in Section II B hereof, the Franchisee shall prepare a cut over plan indicating the sequence in which subscribers will be disconnected from the old system plant and reconnected to the new system plant. The time subscribers are without service should be minimal. The Franchisee shall provide credit to any subscriber who is without service for more than one day of prime time viewing.

II. CONSTRUCTION SCHEDULE AND SEQUENCE

A. Construction Schedule

1. The Franchisee shall file a construction plan acceptable to the Department within 6 months from the effective date of the franchise, unless the filing date is extended by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and plant activation for the rebuild construction. For system upgrades, including converter change outs, similar information appropriate to the form of the upgrade shall be delineated.
2. Activation Milestones. The Franchisee shall develop an activation milestone schedule in quarter year increments based upon the construction plan required by the foregoing Section II.A.1. The initial version of the milestone schedule, and any modification to said initial milestone schedule shall, upon its approval by the Board, be set forth as Exhibit 1 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this

Appendix B and the franchise Agreement. The Franchisee shall complete and activate the entire system throughout the Franchise Area by no later than the date specified in Exhibit 1.

3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the general public residing in the Franchise Area by not having available the services proposed by the Construction of the System in accordance with the construction plan, activation milestone schedule and construction sequence plan required pursuant to Section 4.14 and Appendix B herein. Therefore, liquidated damages for failure to meet such accepted construction schedules shall accrue at the amount of \$500.00 per day, every calendar day, for each missed activation milestone and an additional \$1,000.00 per day, every calendar day, for delay beyond the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the schedules in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
4. Construction of the System shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced offering and distribution of the full range of Service throughout the Franchise Area. The temporary exception areas or other abatement of the Company's service obligations pursuant to Sections 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements. The plan shall consist of a map of the entire Franchise Area and shall clearly delineate the following:
  - (i) The areas within the Franchise Area where the cable system will be initially available to Subscribers, including a schedule of Construction as proposed; and
  - (ii) Areas within the Franchise Area where extensions of the cable System cannot reasonably be done due to the lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 6 months of the effective date of this franchise. This plan shall delineate the sequence of the construction or upgrade within the Franchise Area. The sequence areas should be designated using street names as boundaries.
2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without the prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations from the approved initial sequence plan.
3. The initial version of, and any modification to, the construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
4. Actual physical Construction may not commence prior to the submission of the construction plan (II.A.1.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.1.).
5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.



**BUILD SCHEDULE FOR  
FRANCHISE AREA I**

(Area I)  
April 1994

APPENDIX B  
CONSTRUCTION/ACTIVATION PLAN

I. CONSTRUCTION TERMS

A. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plan of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
  - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by the original owner, the new pole should preferably retain the

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same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/4" long with figures 0.4".

#### B. Specific Terms

- 1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
- 2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DES, or other distribution system in said structure, including any conduit used in connection with any other

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system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.

3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:
  - vacant or abandoned buildings;
  - inability of the Franchisee to obtain access (physical or constructive) to a structure;
  - situations which substantially and adversely affect the economic viability of the system; and
  - such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of the Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation," "activated," etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the

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headends, or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the system to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered finally complete until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of subscriber service.

### C. Upgrade Requirements

1. The Franchisee shall upgrade the System to be capable of seventy-seven (77) activated analog channels before December 31, 1998.
2. As part of the upgrade sequence plan required in Section II B hereof, the Franchisee shall prepare a plan indicating the sequence of areas in which subscribers will experience a short interruption of service. The time subscribers are without service should be minimal, in any event, always less than 24 hours. The Franchisee shall provide credits to any subscriber consistent with the provisions of Section 6.

## II. UPGRADE SCHEDULE AND SEQUENCE

### A. Upgrade Schedule

1. The Franchisee shall file an upgrade plan acceptable to the Department within 3 months from the effective date of this Amendment, unless the filing date is extended by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and activation for upgrade. The schedule shall reflect time frames and other measurements by "node area." The upgrade plan shall consist of a map of the entire Franchise Area and shall clearly delineate the upgrade schedule by node area.

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2. Activation Milestones. The Franchisee shall complete and activate the entire upgrade throughout the Franchise Area by no later than December 31, 1998 by completing 127 nodes. Beginning with the third calendar quarter of 1994, at least eight (8) nodes will be completed; for all subsequent quarters at least seven (7) nodes will be completed by the end of each calendar quarter, until the last quarter of 1998.
3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the City or general public residing in the Franchise Area by not having available the upgrade in accordance with the upgrade plan, activation milestone schedule and sequence plan required herein. Therefore, liquidated damages for failure to meet such accepted upgrade schedules shall accrue at the amount of \$500.00 per day, every calendar day, for each missed activation milestone and an additional \$1,000.00 per day, every calendar day, for delay beyond the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the schedules in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
4. Upgrade of the System shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; and (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement. The temporary exception areas or other abatement of the Company's service obligations pursuant to Section 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements.

#### B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 3 months of the effective date of this amendment. This plan shall delineate the sequence of the

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construction or upgrade within the Franchise Area. The sequence areas should be designated using street names as boundaries.

2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations for the approved initial sequence plan.
3. The initial version of, and any modification to, the construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
4. Actual physical Construction may not commence prior to the submission and approval of the construction plan (II.a.I.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.I.).
5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

**BUILD SCHEDULE FOR  
FRANCHISE AREA J**



APPENDIX B  
CONSTRUCTION/ACTIVATION PLAN

I. CONSTRUCTION TERMS

A. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plan of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
  - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by the original owner, the new pole should preferably retain the

same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/4" long with figures 0.4".

B. Specific Terms

- 1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
- 2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DES, or other distribution system in said structure, including any conduit used in connection with any other

system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.

3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:

- vacant or abandoned buildings;
- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the system; and
- such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of the Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation," "activated," etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the

headends, or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the system to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered finally complete until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of subscriber service.

C. Upgrade Requirements

1. The Franchisee shall upgrade the System to be capable of seventy-seven (77) activated analog channels before December 31, 1998.
2. As part of the upgrade sequence plan required in Section II B hereof, the Franchisee shall prepare a plan indicating the sequence of areas in which subscribers will experience a short interruption of service. The time subscribers are without service should be minimal, in any event, always less than 24 hours. The Franchisee shall provide credits to any subscriber consistent with the provisions of Section 6.

II. UPGRADE SCHEDULE AND SEQUENCE

A. Upgrade Schedule

1. The Franchisee shall file an upgrade plan acceptable to the Department within 3 months from the effective date of this Amendment, unless the filing date is extended by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and activation for upgrade. The schedule shall reflect time frames and other measurements by "node area." The upgrade plan shall consist of a map of the entire Franchise Area and shall clearly delineate the upgrade schedule by node area.

2. Activation Milestones. The Franchisee shall complete and activate the entire upgrade throughout the Franchise Area by no later than December 31, 1998 by completing 20 nodes. Beginning with the third calendar quarter of 1994, at least two (2) nodes will be completed by the end of each calendar quarter of 1994; for all subsequent quarters at least one (1) node will be completed by the end of each calendar quarter, until last quarter of 1998.
3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the City or general public residing in the Franchise Area by not having available the upgrade in accordance with the upgrade plan, activation milestone schedule and sequence plan required herein. Therefore, liquidated damages for failure to meet such accepted upgrade schedules shall accrue at the amount of \$500.00 per day, every calendar day, for each missed activation milestone and an additional \$1,000.00 per day, every calendar day, for delay beyond the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the schedules in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
4. Upgrade of the System shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; and (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement. The temporary exception areas or other abatement of the Company's service obligations pursuant to Section 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements.

B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 3 months of the effective date of this amendment. This plan shall delineate the sequence of the

construction or upgrade within the Franchise Area. The sequence areas should be designated using street names as boundaries.

2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations for the approved initial sequence plan.
3. The initial version of, and any modification to, the construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
4. Actual physical Construction may not commence prior to the submission and approval of the construction plan (II.a.I.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.I.).
5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

**BUILD SCHEDULE FOR  
FRANCHISE AREA K**

APPENDIX B  
CONSTRUCTION/ACTIVATION PLAN

I. CONSTRUCTION TERMS

A. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plan of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
  - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by the original owner, the new pole should preferably retain the same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.



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- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/4" long with figures 0.4".

**B. Specific Terms**

- 1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
- 2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DES, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.
- 3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to

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the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:

- vacant or abandoned buildings;
- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the system; and
- such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of the Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation," "activated," etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the headends, or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the system to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered finally complete until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of subscriber service.

C. Upgrade Requirements

1. The Franchisee shall upgrade the System to be capable of seventy-seven (77) activated analog channels before December 31, 1998.
2. As part of the upgrade sequence plan required in Section II B hereof, the Franchisee shall prepare a plan indicating the sequence of areas in which subscribers will experience a short interruption of service. The time subscribers are without service should be minimal, in any event, always less than 24 hours. The Franchisee shall provide credits to any subscriber consistent with the provisions of Section 6.

II. UPGRADE SCHEDULE AND SEQUENCE

A. Upgrade Schedule

1. The Franchisee shall file an upgrade plan acceptable to the Department within 3 months from the effective date of this Amendment, unless the filing date is extended by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and activation for upgrade. The schedule shall reflect time frames and other measurements by "node area." The upgrade plan shall consist of a map of the entire Franchise Area and shall clearly delineate the upgrade schedule by node area.
2. Activation Milestones. The Franchisee shall complete and activate the entire upgrade throughout the Franchise Area by no later than December 31, 1998, by completing 33 nodes. Beginning with the third calendar quarter of 1994, at least two (2) nodes will be completed by the end of each calendar quarter, until the first quarter of 1998, then only one (1) node will be required for completion by the end of each calendar quarter for the second, third, and fourth quarters of 1998.
3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the City or general public residing in the Franchise Area by not having available the upgrade in accordance with the upgrade plan, activation milestone schedule and sequence plan required herein. Therefore, liquidated damages for failure to meet such accepted upgrade schedules shall

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accrue at the amount of \$500.00 per day, every calendar day, for each missed activation milestone and an additional \$1,000.00 per day, every calendar day, for delay beyond the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the schedules in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.

4. Upgrade of the System shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; and (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement. The temporary exception areas or other abatement of the Company's service obligations pursuant to Section 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgments of completion and such acknowledgments may be issued subject to any such abatements.

#### B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 3 months of the effective date of this amendment. This plan shall delineate the sequence of the construction or upgrade within the Franchise Area. The sequence areas should be designated using street names as boundaries.
2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations for the approved initial sequence plan.
3. The initial version of, and any modification to, the construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.

4. Actual physical Construction may not commence prior to the submission and approval of the construction plan (II.a.I.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.I.).
5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

**BUILD SCHEDULE FOR  
FRANCHISE AREA L**

APPENDIX B  
CONSTRUCTION/ACTIVATION PLAN

I. CONSTRUCTION TERMS

A. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plant of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
  - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by the original owner, the new pole should preferably retain

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the same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/4" long with figures 0.4".

B. Specific Terms

- 1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
- 2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.



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3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section, "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:

- vacant or abandoned buildings;
- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the system; and
- such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section : (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation", "activated", etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the headends or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the System to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered finally complete

until proof of performance tests have been conducted on su segment (or, in the case of the entire System, on all segments o. the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of Subscriber Service.

## II. CONSTRUCTION SCHEDULE AND SEQUENCE

### A. Construction Schedule

1. The Franchisee shall file a construction plan acceptable to the Department within 6 months from the effective date of the franchise, unless extended by the Board, which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and plant activation for initial and rebuild construction. For system upgrades, including converter change outs, similar information appropriate to the form of the upgrade shall be delineated.
2. Activation Milestones. The Franchisee shall develop an activation milestone schedule in quarter year increments based upon the construction plan required by the foregoing Section II.A.1. The initial version of the milestone schedule, and any modification to said initial milestone schedule shall, upon its approval by the Board, be set forth as Exhibit 1 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and the franchise Agreement. The Franchisee shall complete and activate the entire system throughout the Franchise Area by no later than the date specified in Exhibit 1.
3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the general public residing in the Franchise Area by not having available the services proposed by the Construction of the System in accordance with the construction plan, activation milestone schedule and construction sequence plan required pursuant to Section 4.14 and Appendix B herein. Therefore, liquidated damages for failure to meet such accepted construction schedules shall accrue at the amount of \$500.00 per day, every calendar day, for each missed activation milestone and an additional \$1,000.00 per day, every calendar day, for delay beyond the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the schedules in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.

4. Construction of the System shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced offering and distribution of the full range of Services throughout the Franchise Area. The temporary exception areas or other abatement of the Company's service obligations pursuant to Sections 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements. The plan shall consist of a map of the entire Franchise Area and shall clearly delineate the following:

- (i) The areas within the Franchise Area where the cable System will be initially available to Subscribers, including a schedule of Construction as proposed; and
- (ii) Areas within the Franchise Area where extensions of the cable System cannot reasonably be done due to the lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

B. Construction Sequence

1. In addition to the construction plan and activation milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 6 months of the effective date of this franchise. This plan shall delineate the sequence of the construction or upgrade within the Franchise Area. The sequence areas should be designated using street names as boundaries.
2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without the prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations from the approved initial sequence plan.
3. The initial version of, and any modification to, the construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
4. Actual physical Construction may not commence prior to the submission of the construction plan (II.A.1.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.1.).

5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

TRB5/24

Exhibit 1 to Appendix B  
Construction Plan and  
Activation Milestone Schedule  
Quarter Year Increments

Miles in System 68  
Miles Completed 22

Start construction 30 days after franchise is effective at the rate of 5 miles per month:

	New Construction Miles	New Activation Miles	Total Construction Miles	Total Activation Miles
Month One (Oct)			22	22
Month Two (Nov)	5		27	
Month Three (Dec)	5		32	
Month Four (Jan '88)	5	5	37	27
Month Five (Feb)	5		42	
Month Six (Mar)	5		47	
Month Seven (Apr)	5	15	52	37
Month Eight (May)	5		57	
Month Nine (Jun)	5		62	
Month Ten (Jul)	5		67	
Month Eleven (Aug)	1	46	68	68

EXHIBIT 3 TO  
APPENDIX B

TEMPORARY EXEMPTION AREA

Pursuant to Section 4.3 of the Franchise Agreement, the following is a temporary exemption area due to its present and future lack of residential development:

Starting from the San Bernardino Freeway on the northern boundary of the Franchise Area and proceeding south on Mission Road to 7th Street; proceeding east on 7th Street to Boyle Avenue and proceeding south on Boyle Avenue to 8th Street; proceeding east on 8th Street to Soto Street; proceeding south on Soto Street to Olympic Boulevard; proceeding east on Olympic Boulevard to Los Palos; proceeding south on Los Palos to Noakes Street; proceeding east on Noakes Street to the Los Angeles-Commerce City Boundary; proceeding westerly along the City Boundary to Alameda Street; proceeding north on Alameda Street to the San Bernardino Freeway; proceeding east along the San Bernardino Freeway to the point of origin at Mission Road.

TRB5/24

**BUILD SCHEDULE FOR  
FRANCHISE AREA M  
(NO REQUIREMENTS)**

**BUILD SCHEDULE FOR  
FRANCHISE AREA N**



APPENDIX B

CONSTRUCTION/ACTIVATION PLAN

I. CONSTRUCTION TERMS

A. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plant of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
  - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by the original owner, the new pole should preferably retain

the same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 3/4" long with figures 0.4".

B. Specific Terms

- 1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
- 2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.

3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exceptions of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section, "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:

- vacant or abandoned buildings;
- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the system; and
- such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section : (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation", "activated", etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the headends or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the System to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire system will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered finally complete

until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of Subscriber Service.

C. Reconstruction Requirements

1. The Franchisee shall reconstruct or upgrade the System to be capable of sixty (60) activated channels before the end of year ten (10) of the Franchise, unless relieved of its obligation to do so by the City. In order to be relieved of this obligation, the Franchisee may petition the City by year eight (8) and present documentation substantiating that said upgrade is not warranted by community needs. Failure to upgrade as directed by this Franchise, unless granted relief from said obligation, shall constitute a material breach pursuant to Section 13 of this Franchise.
2. As part of the construction sequence plan required in Section II B hereof, the Franchisee shall prepare a cut over plan indicating the sequence in which subscribers will be disconnected from the old system plant and reconnected to the new system plant. The time subscribers are without service should be minimal. The Franchisee shall provide credit to any subscriber who is without service for more than one day of prime time viewing.

II. CONSTRUCTION SCHEDULE AND SEQUENCE

A. Construction Schedule

1. The Franchisee shall file a construction plan acceptable to the Department at least 6 months prior to the commencement of construction unless the filing date is modified by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing inspection and plant activation for the rebuild construction. For system upgrades, including converter change outs, similar information appropriate to the form of the upgrade shall be delineated.
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approval by the Board, be set forth as Exhibit 1 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and the Franchise Agreement. The Franchisee shall complete and activate the entire system throughout the Franchise Area by no later than the date specified in Exhibit 1.

3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the general public residing in the Franchise Area by not having available the services proposed by the Construction of the System in accordance with the construction plan, activation milestone schedule and construction sequence plan required pursuant to Section 4.14 and Appendix B herein. Therefore, liquidated damages for failure to meet such accepted construction schedules shall accrue at the amount of \$500.00 per day, every calendar day, for each missed activation milestone and an additional \$1,000.00 per day, every calendar day, for delay in the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to Exhibit 1 approved by the Board, unless the Board finds that such extension is warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could have been prevented. Determinations by the Board may be appealed to the Council.
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  - (ii) Areas within the Franchise Area where extensions of the cable System cannot reasonably be done due to the lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan at least 6 months prior to the commencement of Construction. This plan shall delineate the sequence of the construction or upgrade within the service area. The sequence areas should be designated using street names as boundaries.
2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without the prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations from the approved initial sequence plan.
3. The initial version of, and any modification to the Construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
4. Actual physical Construction may not commence prior to the submission of the construction plan (II.A.1.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.1.).
5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

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